

Supreme Court of the United States

OCTOBER TERM, 1969

No. 730

ARCHIE WILLIAM HILL, JR.,

Petitioner,

—v.—

CALIFORNIA,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF CALIFORNIA

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in and for the County of Los Angeles, #325651, Clerk's
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IN THE
SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

S.C. No. 325651
D. A. No. 400723

THE PEOPLE OF THE STATE OF CALIFORNIA, PLAINTIFF

v.

ALFRED ELMO BAUM, RICHARD JOSEPH BADER and ARCHIE
WILLIAM HILL, JR., DEFENDANTS

INFORMATION—filed July 15, 1966

ROBBERY (Sec. 211 P.C.)—
COUNTS I & II
KIDNAP/ROBBERY—COUNT III

The said ALFRED ELMO BAUM, RICHARD JOSEPH BADER and ARCHIE WILLIAM HILL, JR. are accused by the District Attorney of and for the County of Los Angeles, State of California, by this information, of the crime of ROBBERY, in violation of Section 211, Penal Code of California, a felony, committed as follows: that the said ALFRED ELMO BAUM, RICHARD JOSEPH BADER and ARCHIE WILLIAM HILL, JR. on or about the 4th day of June, 1966, at and in the County of Los Angeles, State of California, did willfully, unlawfully, feloniously and by means of force and fear take personal property from the person, possession and immediate presence of Nicholas Georgiade.

That at the time of the commission of the above offense said defendants were armed with a deadly weapon, to wit, .22 caliber revolver, .22 caliber starter pistol, snap blade knife, bayonet.

COUNT II

For a further and separate cause of action, being a different offense of the same class of crimes and offenses as the charge set forth in Count I hereof, the said

ALFRED ELMO BAUM, RICHARD JOSEPH BADER and ARCHIE WILLIAM HILL, JR. is accused by the District Attorney of and for the County of Los Angeles, State of California, by this information, of the crime of ROBBERY, in violation of Section 211, Penal Code of California, a felony, committed as follows: that the said ALFRED ELMO BAUM, RICHARD JOSEPH BADER and ARCHIE WILLIAM HILL, JR. on or about the 4th day of June, 1966, at and in the County of Los Angeles, State of California, did willfully, unlawfully, feloniously and by means of force and fear take personal property from the person, possession and immediate presence of Bertha Georgiade.

That at the time of the commission of the above offense said defendants were armed with a deadly weapon, to wit, .22 caliber revolver, .22 caliber starter pistol, snap blade knife, bayonet.

COUNT III

For a further and separate cause of action, being a different offense of the same class of crimes and offenses as the charges set forth in all the preceding counts hereof, the said ALFRED ELMO BAUM, RICHARD JOSEPH BADER and ARCHIE WILLIAM HILL, JR. are accused by the District Attorney of and for the County of Los Angeles, State of California, by this information, of the crime of KIDNAPING FOR THE PURPOSE OF ROBBERY, in violation of Section 209 Penal Code, a felony, committed as follows: That the said ALFRED ELMO BAUM, RICHARD JOSEPH BADER and ARCHIE WILLIAM HILL, JR. on or about the 4th day of June, 1966 at and in the County of Los Angeles, State of California, did willfully, unlawfully and feloniously kidnap and carry away Bertha Georgiade, to commit robbery.

EVELLE J. YOUNGER, District Attorney
for the County of Los Angeles,
State of California

By /s/ R. Paul Esnard
R. PAUL ESNARD, Deputy

IN THE
SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

Department No. 101

Case No. 325651

THE PEOPLE OF THE STATE OF CALIFORNIA

vs.

ARCHIE WILLIAM HILL, JR.

Present Hon. HERBERT V. WALKER, Judge

APPEARANCES:

(Parties and Counsel checked if present.
Counsel shown opposite parties represented.)

EVELLE J. YOUNGER, District Attorney, by
J. JOHNSON, Deputy
E. J. HOVDEN, Public Defender, by
L. BERGER, Deputy

MINUTES—August 5, 1966

On motion under section 995 Penal Code called for hearing. Motion under section 995 Penal Code is argued and denied as to each count. The defendant is arraigned and pleads "Not Guilty" to each count. Cause is transferred to department 100 and continued to August 9, 1966 at 9 A.M. for resetting. Remanded.

**IN THE
SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

Department No. 100

THE PEOPLE OF THE STATE OF CALIFORNIA

vs.

REMANDED

Present Hon. RICHARD F. C. HAYDEN, Judge

MINUTES—August 19, 1966

	<u>Defendant</u>	<u>Defendant's Counsel</u>	<u>Date of Trial</u>	<u>Dept.</u>
325651	Archie William Hill Jr **	L Berger Deputy Public Defender	Sept. 27, 1966	106
326408	Leon Brown	J Moss	Sept. 29, 1966	118
326742	Bernard Harold Benton	" "	Sept. 26, 1966	110
326624	Henry Epharn alias Henry Effron Jr	" "	Sept. 29, 1966	119
326881	Stella Alarid	" "	Sept. 27, 1966	101
326884	Samuel Lloyd and John William Mingo	" "	Sept. 30, 1966	102
326985	Marie Carter	" "	Sept. 30, 1966	102
326996	Jesse Wade Jackson	" "	Sept. 30, 1966	103
327005	Byron Lowry Hamlin	" "	Sept. 30, 1966	107
327009	Wedisse Mayfield ** and S A Christian Jr	" "	Sept. 30, 1966	108
327031	Atilla John Prisznyak and Wayne Thomas Cook alias Duane Thomas Cook	" "	Sept. 30, 1966	108
327032	True Name John Ysidro Adams	" "	Sept. 30, 1966	110
327103	John Meija Johnny Holquin Aranda	" "	Sept. 30, 1966	111
	Bail			
326900	Bobby Jenkins	" "	Sept. 29, 1966	118
326713	Antonia Valdez Cristo alias Antonia Valdez	" "	Oct. 4, 1966	112
326899	Emanuel Robert McMeans	" "	Sept. 30, 1966	108
326999	Charles M Sanchez	" "	Sept. 30, 1966	104
327000	Richard Lozano	" "	Sept. 30, 1966	106
327007	Richard Earl Rankin	" "	Sept. 30, 1966	108
327048	James Michael Sheeham	" "	Sept. 30, 1966	110

As to each defendant: Deputy District Attorney J Pregerson and the defendant with counsel, present. Pleads "Not Guilty". Trial set for 9 A M on date and in department indicated.

* Defendant waives time for trial.

** Defendant, personally, and all counsel waive trial by jury.

*** Defendant denies the allegations of the prior convictions.

IN THE
SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

Department No. 106

Case No. 325651

THE PEOPLE OF THE STATE OF CALIFORNIA

vs.

ARCHIE WILLIAM HILL, JR.

Present Hon. VERNON P. SPENCER, Judge

APPEARANCES:

(Parties and Counsel checked if present.
Counsel shown opposite parties represented.)

EVELLE J. YOUNGER, District Attorney, by
H. HERZBRUN, Deputy
E. J. HOVDEN, Public Defender, by
L. BERGER, Deputy

MINUTES—September 27, 1966

Cause called for trial. The defendant(s) personally
and all counsel waive jury trial.

By stipulation of all counsel the cause is submitted on
the testimony contained in the transcript of the proceed-
ings had at the preliminary hearing, subject to this Court's
rulings, with each side reserving the right to offer ad-
ditional evidence, and all stipulations entered into at the
preliminary hearing be deemed entered into in these
proceedings.

It is further stipulated that any exhibits received at the
preliminary hearing are deemed received in evidence in
these proceedings, subject to this Court's ruling.

People's Exhibit 9 (preliminary transcript) in evi-
dence by reference. Further proceedings continued to Oc-
tober 6, 1966, 9 A M for additional evidence, Remanded.

IN THE
DISTRICT COURT OF APPEAL OF THE STATE OF
CALIFORNIA, SECOND APPELLATE DISTRICT

Crim. 12275

No. 2 Crim. 13180

Filed Court of Appeal, 2nd District, Feb. 9, 1967

THE PEOPLE OF THE STATE OF CALIFORNIA,
PLAINTIFF-RESPONDENT

vs.

ARCHIE WILLIAM HILL, JR., DEFENDANT-APPELLANT

Appeal from the Superior Court of the State of California
for the County of Los Angeles

HON. VERNON P. SPENCER, Judge

REPORTER'S TRANSCRIPT—September 27, 1966

APPEARANCES:

For Plaintiff-Respondent: The State Attorney General, State of California.

For Defendant-Appellant: In Propria Persona.

[fol. 2] LOS ANGELES, CALIFORNIA, TUESDAY,
SEPTEMBER 27th, 1966, 1:30 P.M.

THE COURT: Hill.

MR. HERZBRUN: Your Honor, in this matter there is to be a waiver of jury and submission on the transcript.

MR. BERGER: Yes, your Honor. There was a jury waiver taken at arraignment.

THE COURT: All right.

MR. HERZBRUN: May it now be stipulated that the Court may read and consider the testimony taken at the

preliminary hearing with the same force and effect as though the witnesses there called were here called, sworn and testified to the matters therein contained; all stipulations entered into at the preliminary hearing may be deemed entered into here; that the exhibits introduced at the preliminary may be deemed introduced here under their respective numbers, that is People's 1 through 8, subject to either side putting on additional testimony and subject also to the original transcript being marked in evidence by reference as the next exhibit in order, that is People's 9; subject also to the right of counsel to make whatever objections they desire to the introduction of evidence and put on such additional testimony as they may desire.

MR. BERGER: So stipulated.

THE COURT: All right. Take the confrontation waiver.

[fol. 3] MR. HERZBRUN: Mr. Hill, you understand that what happens now is the Court will read the testimony taken at the preliminary hearing and listen to whatever other testimony is introduced, and upon that testimony decide whether you are guilty or not guilty.

Is that arrangement satisfactory to you?

THE DEFENDANT: Yes, it is.

MR. HERZBRUN: Mr. Hill, you have a right to have witnesses called back into court to testify a second time, but you may waive that right, give up that right if you so desire.

Do you give up your right of confrontation?

THE DEFENDANT: Yes.

MR. BERGER: Counsel joins.

THE COURT: All right.

MR. BERGER: I understand a convenient date would be the 6th of October?

THE COURT: I guess so. It won't be any sooner than that. Is there going to be additional testimony?

MR. HERZBRUN: There will be on the part of the People—one witness.

THE COURT: Very well. The matter will be continued to October 6, 1966.

(The matter was continued to Thursday, October 6, 1966.)

IN THE MUNICIPAL COURT OF LOS ANGELES
JUDICIAL DISTRICT, COUNTY OF LOS ANGELES,
STATE OF CALIFORNIA

Division No. 68

No. 900,707

HON. GEORGE B. ROSS, Judge

THE PEOPLE OF THE STATE OF CALIFORNIA, PLAINTIFF
vs.

ALFRED ELMO BAUM, RICHARD JOSEPH BADER, JERRY
EDWARD BACA, (Dismissed) ARCHIE WILLIAM HILL, JR.,
DEFENDANTS

CT. I, II ROBBERY (Viol. Sec. 211 P.C.)

CT. III KIDNAPING FOR THE PURPOSE OF ROB-
BERY (Viol. Sec. 209 P.C.)

Felonies

REPORTER'S TRANSCRIPT, PRELIMINARY EXAMINATION—
Friday, July 1, 1966

APPEARANCES:

For the People:

ROBERT R. DEVICH, Esq.
Deputy District Attorney

For the Defendants

MEYER NEWMAN, Esq.
Deputy Public Defender

Baum and Baca:

For the Defendant
Bader:

JOSEPH M. ROSEN, Esq.

For the Defendant
Hill:

LOUIS BERGER, ESQ.

WILLIAM A. WEIGEL, C.S.R.
Official Reporter

[fol. 2] LOS ANGELES, CALIFORNIA, FRIDAY 1,
1966, 11:45 A.M.

THE COURT: Is the Baum case ready?

MR. DEVICH: The People are ready.

THE COURT: What are we going to do about the transcript?

MR. DEVICH: I believe we figured it would be just as expeditious to start from the first.

THE COURT: Whatever you want to do.

All defendants are present, counsel? Do you stipulate?

MR. ROSEN: Yes, your Honor.

MR. NEWMAN: Yes.

MR. BERGER: Yes, your Honor.

MR. DEVICH: May the following be marked for identification, a .22 Hornet revolver, bearing the number 6W21572? May it be marked People's 1?

THE COURT: Give me the serial number again.

MR. DEVICH: 6W21572.

THE COURT: All right.

MR. DEVICH: Further marked as People's 2 for identification a model 1960 caliber .22 Starter pistol. May that be marked People's 2?

THE COURT: So marked.

MR. DEVICH: May the following be marked People's [fol. 3] 3 collectively for identification: two switch-blade knives, with black handles, approximately eight inches in over-all length?

THE COURT: So marked.

MR. DEVICH: People's 4 for identification, a Fujica 35 automatic camera, bearing number 394844 with the brown case. May that be marked People's 4?

THE COURT: So marked.

MR. DEVICH: People's 5 for identification a Toshiba, T-o-s-h-i-b-a FM-AM portable radio and brown case. May that be marked People's 5?

THE COURT: So marked.

MR. DEVICH: And finally collectively as People's for identification number 6 what appears to be two white T-shirts sewn, with each T-shirt containing two holes. May they be marked People's 6?

THE COURT: Six.

MR. DEVICH: Thank you.

The People call Mr. Nicholas Georgiade.

NICHOLAS GEORGIADE

called as a witness by and on behalf of the People, having been first duly sworn, was examined and testified as follows:

THE CLERK: State your name, please.

THE WITNESS: Nicholas Georgiade. G-e-o-r-g-i-a-d-e.

[fol. 4]

DIRECT EXAMINATION

BY MR. DEVICH:

Q Do you reside at 11935 Laurel Hills, in Studio City?

A That is right.

Q Is your phone number 761-7725?

A That is right.

Q With whom do you reside there, sir?

A With my wife and my mother.

Q Did you reside there on the date of June 4, 1966?

A Yes, I did.

Q Were you there in the evening around 10:20 P.M.?

A Yes, I was.

Q Were you with your wife and mother that evening?

A Yes, I was.

Q Did something happen at that location at approximately that time?

A Yes, it did.

Q What, sir?

A At about between 10:15 and 10:20 there was a very light tapping on my door, my front door. I went over to the front door and turned the light on, opened the door, and was greeted by four men. I believe two were wearing [fol. 5] masks, and two were unmasked. Two were holding guns, and two were holding knives.

Q Then what happened, sir?

A I think I was told this was a stickup. I am not quite sure. I for some reason thought it was some friends

of mine, pulling a joke, and I said, "You guys must be kidding around."

They said something like, "No. We are not fooling around."

And I said, "What is this, some kind of a joke?"

Right after that I was hit on the head.

Q With what were you hit on the head with?

A A gun.

Q I show you People's 1 for identification. Would you please examine it and see whether or not it's similar to the one that you were struck on the head with?

A It was this type gun, the same model, same color, same handle.

Q What portion of the gun were you struck on the head with?

A I don't know.

Q You indicated there were two with masks and two without masks.

A That is correct.

Q The two with masks, were they carrying anything [fol. 6] in their hands?

A Yes.

Q What, sir?

A The one I remember was the shortest man had that little gun there on the table.

Q Is that People's 2 for identification?

A That is correct. I don't recall who was carrying the other gun, but I know it was that other gun on the table, the one you just showed me.

Q You indicated two of them had knives. Do you recall which ones?

A No, I don't.

Q I direct your attention to the defendants seated at the far left of the counsel table. Were any of them the gentlemen that were at that location?

A I cannot recognize anyone positively.

Q Any similarities?

A Yes.

Q Which ones?

A The gentleman with the white shirt.

THE COURT: That is—

THE DEFENDANT BAUM: Baum.
THE COURT: Baum.

BY MR. DEVICH:

Q Which of the four was Mr. Baum, do you recall?

A He was the man without a mask.

[fol. 7] Q Did he have anything in his hand, do you recall?

A I can't recall.

Q You said that you were struck upon the head?

A Yes.

Q Did you receive any injuries?

A Yes. I received a laceration which required, I believe, seven stitches.

Q Were you knocked unconscious?

A No, I wasn't.

Q Was anything taken from you?

A Yes. Several articles. Two cameras, a Toshiba radio, my camera case, which I have had a long time, with lenses, and a few light bulbs in it and flash attachment, which was returned to me.

Q I show you—

THE COURT: Was anything taken from your person?

THE WITNESS: A few dollars, your Honor. I don't recall. Four or five dollars.

THE COURT: Who took the money from your person, do you know?

THE WITNESS: I don't know, sir. This was after I was struck. I don't recall.

BY MR. DEVICH:

Q Was it removed from your person, or did you hand [fol. 8] it over?

A No. I handed it over.

Q Upon demand or what?

A Yes.

Q I show you the Toshiba radio. Where was that the last time you saw it?

A It was in my planter, where I always leave it. That was the last place I saw it.

Q When you were struck upon the head, did you fall to the ground?

A No. I don't think I did. I think I was asked to lay on the floor. I don't think I fell on the ground.

Q Were you bleeding about the head?

A Yes. A great deal.

Q Was it Mr. Baum that obtained the money from you?

A I don't recall.

MR. NEWMAN: That has been asked and answered, your Honor.

THE COURT: Well, he said he doesn't recall.

BY MR. DEVICH:

Q You never gave these defendants or anybody permission to remove these items?

A No, sir.

Q Were you in fear at the time?

[fol. 9] A Yes, sir.

Q Your house is located in Los Angeles County?

A Yes, sir.

MR. DEVICH: I have no further questions, your Honor.

CROSS-EXAMINATION

BY MR. BERGER:

Q Mr., is it Georgiade?

A That is correct.

Q Mr. Georgiade, on this occasion when you gave someone your money, was this before you were struck on the head or after you were struck on the head?

A After I was struck on the head.

Q When you said that this camera and this radio which were marked People's 4 and 5 for identification, were you present when they were taken by someone?

A Yes.

Q Was it before or after you were struck on the head?

A After I was struck on the head.

Q After you were hit on the head were you somewhat in a semi-conscious condition, would you say?

A No. I was fully conscious.

Q You were fully aware of everything that was going on about you?

[fol. 10] A I was fully aware of everything that was going on about me, but I couldn't see.

Q Were you eyes closed?

A No. I was lying face down.

Q Did you see who took the camera and the radio?

A No.

Q You didn't see, because you were lying face down at the time?

A That is correct.

Q Where was your wife and mother at that time?

A My mother was in the den, and my wife was in the bedroom.

Q Was your mother lying face down to your knowledge?

A Kneeling down, yes.

Q What about your wife? What position was she in?

A In a kneeling crouch over me.

Q With her face down also to the best of your knowledge?

A At various times.

Q Did anyone go to the door with you when you answered the door that evening?

A No. Just myself.

Q Did you have a porch light on at that time?

A I turned it on, yes.

[fol. 11] Q You said that one of the men that held the gun had a mask on. Did both of the men who had masks on hold guns?

A I said I didn't recall.

Q You don't recall?

A Two men has masks?

Q You said two men had masks and two had none and two men had guns and two men had knives, is that correct?

A That is correct.

Q The two men that were masked, did they have guns or not, do you know?

A I said I don't recall.

Q The two men that were unmasked, did they have guns or knives if you recall?

A I don't recall. What I mean to say by that is I am not positive.

Q How long were you able to look at the four people on the porch before you were struck on the head?

A Well, from the porch and the conversation that took place in my home I would say about between 30 seconds and a minute.

Q How long were the defendants there in your home until they left you if you know?

A Twenty-five minutes, a half hour.

Q Therefore, your only opportunity to look at the defendants' face was during that 30 seconds to one minute that they were on the porch, is that correct?

A That is correct?

MR. BERGER: Nothing further.

CROSS-EXAMINATION

BY MR. NEWMAN:

Q Sir, do you recall how the defendant that you think you may have recognized was dressed on that occasion?

A No, I don't.

MR. NEWMAN: No further questions.

MR. ROSEN: I have no questions.

MR. DEVICH: I have no further questions, your Honor.

THE COURT: May this witness be excused, gentlemen?

MR. BERGER: No objection.

MR. ROSEN: He wants to be excused?

THE COURT: Yes.

MR. ROSEN: No objection.

THE COURT: Thank you very much for being so patient all morning. We did the best we could. I promised the witnesses the case would be first out, but it wasn't my fault.

MR. DEVICH: Call Esta Georgiade.

[fol. 13]

ESTA MAE GEORGIADE

called as a witness by and on behalf of the People, having been first duly sworn, was examined and testified as follows:

THE CLERK: State your name, please.

THE WITNESS: Esta Mae Georgiade. E-s-t-a M-a-e.

DIRECT EXAMINATION

BY MR. DEVICH:

Q Mrs. Georgiade, you are the wife of the previous witness, Nicholas?

A Yes, I am.

Q You heard his previous testimony?

A Yes, I did.

Q On June 4, 1966, were you at home?

A Yes, I was.

Q In the evening?

A Yes.

Q Did you observe anything unusual happen that evening?

A I was in the bedroom when I heard, actually in the bathroom, right off the master bedroom, and I heard a noise. It sounded like a wrestling match or something like that, and someone said, "Stop fooling around," or "Don't fool around."

[fol. 14] It frightened me. I ran out, and as I ran out, two men met me at my bedroom door.

Q Then what happened?

A Well, the one man that was in the front had a knife over his, kind of over his shoulder, like this.

THE COURT: Holding her right hand up over her shoulder.

THE WITNESS: Yes. And it naturally frightened me. I kind of fell back into the bedroom and said, "Please don't kill me," or something to that effect.

He said, "Lay down on the floor and keep quiet, and you won't get hurt."

Immediately before giving me a chance to do anything or say anything, he said, "Where is your purse?"

BY MR. DEVICH:

Q Where were you at this time?

A In the bedroom.

Q Go ahead.

A I pointed to my bag, which was on a little built-in desk-type thing, and he picked it up, and I said, and at that moment I said, "Please, can I go into the room where my husband is?"

He said, "O. K. Go ahead."

He followed me into the dining area, where my hus-[fol. 15] band was lying on the floor, and my mother-in-law was sitting beside him, holding a towel on his head.

Q Now, this person that had the knife in his hand, is he in court here today?

A I can't be sure, because he had a mask on his face.

Q Then what happened?

A Well, when I got into the dining room area, one of the men—I don't know which one—told me to get down on the floor and keep my head down.

My little dog was barking, and I picked her up and put her in my arms and sat down beside my husband and kind of laid over on top of him. I had my face down, but I guess I am just curious, so I kept looking up. I saw the men. Two of the men were in the bedroom most of the time. As a matter of fact, they kept changing. The one guy that was holding the gun on us remained in that position. The other three men kept switching around. One time one would be at the door, and the next time another one would be at the door, and they kept going back and forth.

Q You indicated that the one with the knife in your bedroom went and obtained your purse.

A Yes.

Q Did you have some property in that purse?

A Yes.

[fol. 16] Q What?

A My wallet and my card case.

Q Did you have any money in that wallet?

A Yes. I had \$40.

Q Is the person in court here today who was holding the gun?

A The man was wearing a mask.

Q With the gun?

A Yes, that was holding the gun on us.

Q I show you People's 1 for identification. Is this similar in nature to the gun that you saw?

A Yes, it is.

Q I show you People's 2 for identification. I'm sorry. Three.

THE COURT: Three.

BY MR. DEVICH:

Q Are these similar in nature to the ones that you saw in the hand of the masked person?

A Yes.

THE COURT: Were they open, the blades extended?

THE WITNESS: Yes.

THE COURT: You started to say something about, I think you were cut off, about identification of the man who had the mask on holding the gun. Did you see any part of his face?

THE WITNESS: Well, I could naturally see his [fol. 17] eyes, because there were holes cut in the mask for him to see. I noticed that the mask kept sliding to one side, and I noticed he had a large bridge to his nose.

BY MR. DEVICH:

Q I show you People's 6 for identification. Are these similar in nature to the masks that the two gentlemen had?

A Yes.

THE COURT: Does this person resemble any one of the defendants that we have before us this morning?

THE WITNESS: Well, I can't be positive. I really would rather not say, because I can't be positive about that. Your Honor.

THE COURT: All right.

BY MR. DEVICH:

Q There were two gentlemen without masks, is that correct?

A Yes.

Q Did you ever see anything in their hands?

A They all had weapons at one time or another, but, I don't know. It seemed like one time I saw one with a gun, and the next time saw that same man with a knife, so I don't know if they were passing the weapons back and forth or what they were doing.

Q Is there anybody here in court today that was at that location that evening?

[fol. 18] A Yes. The man in the white shirt.

Q Mr. Baum?

THE COURT: Baum.

THE WITNESS: Yes.

BY MR. DEVICH:

Q What part did he play in this episode?

A At one point I saw him with the little gun, that little one there, in his hand.

Q Is that People's 2 for identification?

A Yes. And at another point I saw him with a knife in his hand.

Q Was it similar in nature to the two knives People's 3?

A Yes. I can recognize him simply because he didn't have a mask on his face, and he was standing in the doorway that leads into the hallway, which was right over me, and I looked up at him. He had a black sailor's watch cap on, pulled down over his ears.

Q I direct your attention to Mr. Bader, seated at the far left of the counsel table. Does he resemble in any nature any of the fellows at your home that evening?

A The one with the red shirt on?

Q No. The gentleman with the green jacket, sitting at the far left of the counsel table.

A Yes. He looks very much like the man who was [fol. 19] holding a gun on us most of the time, standing in front, you know, right close to the front door.

THE COURT: He had a mask on?

THE WITNESS: Yes, sir.

THE COURT: Could you see under the mask?

THE WITNESS: No, but his eyes, his eyes and his nose look similar to the man that was holding the gun on us.

THE COURT: All right.

BY MR. DEVICH:

Q Did you subsequently find that your money was missing from your wallet?

A Yes. Well, they took everything out of my wallet and just kind of strew it all over the dining room table.

Q Was the money gone?

A Yes.

Q I show you this camera, People's 4 for identification. Will you please examine it and see whether or not this is your camera?

A I would saw it's mine. It's exactly like the one I had.

Q Was it at your house on that evening?

A Yes.

Q Was it taken by any of these gentlemen?

A Yes.

[fol. 20] Q Did you provide anybody with the number for that particular camera?

A Yes, I did.

Q Whom?

A It was Sergeant Gastaldo.

Q Did you give anybody permission to remove your money or to remove that camera from that house?

A They asked me for the money. No. As a matter of fact, he asked me for my bag. When I pointed it to him, he took the bag and dumped everything out and took the money out of the wallet.

Q So you didn't give him permission?

A No.

Q Were you afraid at the time?

A I was scared to death.

Q Did you see the defendants or the subjects at your house leave?

A No, because before they left they told us to keep our heads down, and I did. At that point I was too afraid to raise my head again, so I did keep my head down then.

Q So when you looked up, they were all gone?

A Yes. My husband said to me, "Are they gone?" I said, "I think so."

And I looked up, and I didn't see them, so I assumed that they were gone. We had heard the door close.

[fol. 21] THE COURT: You say you did hear the door close or you didn't?

THE WITNESS: I did hear it close.

THE COURT: You did?

THE WITNESS: Yes, sir. I did see the one man who picked up the radio and tucked it under his arm. I don't know which one it was, but I saw a man pick up the radio and tuck it under his arm.

BY MR. DEVICH:

Q Was he masked or unmasked?

A I can't remember.

MR. DEVICH: I have no further questions, your Honor.

CROSS-EXAMINATION

BY MR. BERGER:

Q Did you see the man who took the camera?

A No. This camera?

Q Yes.

A No. This camera, it's a little panel bedroom that I use for a sewing room, and it was in there. I wasn't in that room while the defendants were there that night, so I don't know. I didn't even know it was missing, as a matter of fact, until the next day.

Q So it wasn't taken on that night to your knowledge, is that correct?

[fol. 22] A Not to my knowledge. It was there that day, because I had been sewing all day.

Q You did see it that day. What about this money? Was there any money taken out of your wallet in your presence? Did you see the money taken out of your wallet?

A No. Not actually. I saw them taking things out my bag, and they took all of my cards out of my card case and threw them around on the table.

Q You cannot identify anyone else other than the identification that you have made when you previously testified this afternoon, is that right?

A Yes.

MR. BERGER: Nothing further.

CROSS-EXAMINATION

BY MR. NEWMAN:

Q Did Mr. Baum have any conversation with you? Did he talk to you, this gentleman to my right?

A No.

Q Do you recall how he was dressed except for this cap?

A No. I don't.

MR. NEWMAN: I have no further questions.

[fol. 23]

CROSS-EXAMINATION

BY MR. ROSEN:

Q What color eyes did you recognize Mr. Bader as having?

A I was far enough away and the light was dim enough that I couldn't see the color of his eyes.

Q You couldn't see the color of his eyes?

A Just the shape of his eyes and the shape of the bridge of his nose, sir.

Q Which one of these two hods was he wearing?

A Well, I don't think I could be positive about that. They are so similar. This one looks to me like it might be the one, but I wouldn't swear to it.

THE COURT: Which one is she showing?

THE WITNESS: This one.

MR. ROSEN: P-1.

THE COURT: P-1. All right.

BY MR. ROSEN:

Q Just the general shape of the eyes, you say, that makes you believe that it was Mr. Bader that was holding that gun?

THE COURT: No. She didn't say that.

THE WITNESS: Yes, sir. I did say that.

THE COURT: She said the shape of the eyes and the bridge of the nose.

MR. ROSEN: And the bridge of the nose.

[fol. 24] THE COURT: There were two things.

THE WITNESS: Right.

BY MR. ROSEN:

Q What you are saying is that they resemble?

A That is right.

Q Mr. Bader?

A That is what I said, or that is what I meant to say.

MR. ROSEN: I have nothing further.

THE COURT: All right.

MR. DEVICH: I have nothing further.

THE COURT: Call your next.

MR. DEVICH: Mrs. Bertha Georgiade.

BERTHA GEORGIADE

called as a witness by and on behalf of the People, having been first duly sworn, was examined and testified as follows:

THE CLERK: State your name, please.

THE WITNESS: Bertha Georgiade.

THE CLERK: Your first name, please?

THE WITNESS: Bertha.

DIRECT EXAMINATION

BY MR. DEVICH:

Q Mrs. Georgiade, were you residing with your son, [fol. 25] the previous witness, Nicholas Georgiade, at 119½ Laurel Hills, in Studio City?

A Yes.

Q Were you there on the evening of June 4, 1966?

A Yes.

Q Will you tell the Court what happened at that location?

A Well, that night we were watching some story, and we hear the door, and my son gets up next to me, and he opened the door, and still I was watching the movie. I saw four boys, young fellows, and two was with white hoods, and he was talking, but I don't pay no attention, you know.

Then I hear, you know, "Lay down," something. I gets up and runs, and so my son was down on the floor. I was so scared I couldn't turn to look.

The fellow told me, "Lay down, and you don't get hurt."

THE COURT: Lay down and what?

THE WITNESS: "Lay down, and you don't get hurt."

I laid down, and I told him I was going to lay down next to my son.

He said, "O. K."

I laid down to him, and I saw the blows.

I said, "Please, I am going to pull my dress to put on [fol. 26] his head, because he is bleeding."

I lifted my dress, and I put it on his head, and my hand was full of blood. I turned my head, not to look at no one, and I show my hands full of blood.

I ask him, "Please, anybody give me a towel."

One fellow went and got a towel.

After that my daughter-in-law had to lay down next to him, too.

THE COURT: Brother-in-law?

THE WITNESS: My daughter-in-law. I couldn't turn to look at no one, because I was so scared, and my boy was bleeding. I don't know what, and blood was in my hands, and my dress, the towel, and that is all.

They were asking, you know, for money.

BY MR. DEVICH:

Q Did one of them ask you for what?

A Money.

Q Was this one with a mask or without a mask?

A I don't turn to look at no one, because I was so afraid.

I told him, "In my bag, white bag, I have \$10 in change." Well, they went and looked and couldn't find.

THE COURT: Who did?

THE WITNESS: The fellow, they asked me for money, and I told them where I have the money, in the [fol. 27] closet in my bag. I have \$10 in change.

BY MR. DEVICH:

Q Were you in the front room at that time?

A Yes, laid down between living room and dining room by the door.

Q They asked you for money. Then what happened?

A They came back and said, "No money there."

I said, "Yes, is \$10 in change in my bag in my wallet." He said, "Get out and walk slow."

THE COURT: He said?

THE WITNESS: Yes, the boys. One. I don't know which one.

THE COURT: All right.

THE WITNESS: And I get up. There were two boys. I walked in my bedroom, and I saw my bag was open, and the wallet, the change was gone. I said, "There was \$10," but I was looking again.

I opened the zipper and I find the \$10, and he took it. He said, "O. K. Go back and lay down."

BY MR. DEVICH:

Q These two fellows, did they have masks on?

A I couldn't turn my head to look, because I was so scared.

Q Did you see anything in their hands?

A I saw a gun, two guns, but I don't see the knives. [fol. 28] I don't know. I saw the one, he was holding a gun, and the other one, one big, one small, but I was so scared.

Q Did you see any of the guns when you were taken or when you went from the front room to the bedroom?

A Yes. What is that? Excuse me.

Q The two fellows that went with you from the front room to the bedroom, did you see any guns in their hand?

A Yes.

Q At that time?

A But I don't know now. I was so mixed up. I saw the guns, but who had what it was, I was just shaking all over. I couldn't hold myself. That is all I know. I come back, and I put my head down and I couldn't.

Q One of them took your money from the purse then, is that correct?

A They opened my bag and took the change and couldn't find the \$10. They asked me to get up.

Q Excuse me. When you were in the bedroom, did somebody take your money from your purse there?

A It was empty, open, but they couldn't find in the wallet the \$10. I opened and give it. He threw it like that, you know.

I said, "Here is the ten."

Q Then what happened after that?

[fol. 29] A They make me to walk back and lay down again next to my son.

Q Then what happened?

A Well, they was walking around. Just as I was looking, you know, I was down, but I hear they were walking down every room, and they were looking for more money. I hear he say, one, "We have got to find more money or we won't leave the house. We should find more money." A couple of times.

I said he had \$40 from my daughter-in-law, a couple of dollars, a few dollars from my son, and \$10 from me. That was not enough. They come back.

Q How far is it from the front room to the bedroom?

A Well, I think, I am not sure, maybe 20, 25 feet.

Q Now, did these men leave?

A After so long they was looking all over and asking for money and more money.

THE COURT: He didn't ask you that. Did they finally leave?

THE WITNESS: They leave. Yes.

BY MR. DEVICH:

Q Did you see them leave together?

A I hear. Yes. Yes.

MR. DEVICH: I have no further questions, your [fol. 30] Honor.

CROSS-EXAMINATION

BY MR. BERGER:

Q Mrs. Georgiade, you heard them leave or saw them leave?

A I hear. My head was down and I hear each one,

and he said, "Nobody get up or do anything before we leave."

And we said, "No," and everybody leave. They pulled the door closed, and after we get up.

Q Now, somebody asked you if you had money, and you said you had some money in your purse, \$10, is that right?

A Yes.

Q Then you went into the bedroom where you keep the purse or you went where where you keep the purse?

A In my bedroom. I don't want. They make me to go.

Q What do you mean they made you to go?

A Yes. They couldn't find the money.

I said, "I'm sure I had it in my pocketbook, white pocketbook, long."

I have my pocketbook, this one.

Q That is the pocketbook?

A That is right. They couldn't find, because the wal-[fol. 31] let that I have, it's not called a wallet.

Q Excuse me. Were you in the bedroom at that time or were you still in the living room?

A No. I was in the living room, laying down. The time they couldn't find, they come back and told me, "No money over there. We look."

I said, "I'm sure I have money," and it was in the zipper here.

Q Was it at that time that you went to the bedroom?

A They told me, "Get up and show us, but walk slow."

Q Do you know who told you to get up and show?

A No. I didn't turn to look at the faces.

Q Then when you got to the bedroom, did someone tell you to leave the bedroom and go back into the living room?

A They make me walk again, to go lay down.

Q Someone told you to leave?

A Yes.

Q You can't identify any one of the people that were in the house that evening besides yourself, your son, and your daughter-in-law, is that correct?

A Yes.

Q When you said "young men," you don't know whether they were young men or old men?

[fol. 32] A Oh, he was young, very young.

Q How do you know they were young men?

A I can tell.

Q How? You didn't see their faces?

THE COURT: You saw two of their faces, didn't you?

THE WITNESS: Yes. The time I walked from the living room I was watching television and to go to the room, there were four together, and I looked like that, and I saw my boy on the floor.

And he said, "Lay down. You don't get hurt."

One had the hood, blue, black. I don't know.

BY MR. BERGER:

Q Was that over his eyes, that cap?

A Yes.

Q You saw two faces, did you?

A Yes.

Q And those two faces looked young to you, is that right?

A Yes. He was young. It was not an old man.

Q About how old did they look to you?

A Well, I would figure 20, over 20; something like that.

Q But the other two faces you didn't see the faces that were covered by a mask, is that correct?

[fol. 33] A No.

Q You don't know whether they were young or old, is that right?

A Well, I can't say.

Q Is that true?

A That is true. I mean I was so scared. That is all.

MR. BERGER: Nothing further.

MR. NEWMAN: Nothing further.

THE COURT: Anything else?

MR. DEVICH: I have nothing further of this witness.

MR. ROSEN: I'd like to ask a few questions.

CROSS-EXAMINATION

BY MR. ROSEN:

Q Mrs. Georgiade, when they first came on the scene, they told you to lay down, is that right?

A Yes.

Q Is that when you laid down alongside of your son?

A Yes.

Q That was in the living room?

A Yes. Like dining room and living room is the same thing, yes. It's a big room. Yes.

Q Your purse was in your bedroom?

[fol. 34] A Yes.

Q They asked you where your purse was?

A Yes.

Q You told them in the bedroom?

A Yes.

Q They then went into the bedroom and came back and told you there was no money in the purse?

A Yes.

Q You told them there was money in the purse?

A Yes. They took the change and they couldn't find the \$10.

Q You told them that you would get the \$10 for them?

A No. I didn't say that. I said, "I'm sure I have \$10 in my bag there."

They said, "Get up slow and show" or "give" or something like that.

So I gets up and I walked and I went in my bedroom, and I see my bag open. I opened this little bag. I had my \$10, and I gave it. With the zipper.

Q Then you walked back to where you were?

A Yes.

MR. ROSEN: That is all I have, your Honor.

MR. DEVICH: I have no further questions of the witness.

THE COURT: All right.

[fol. 35] MR. DEVICH: The People call Scott Armstrong.

SCOTT LEE ARMSTRONG

called as a witness by and on behalf of the People, having been first duly sworn, was examined and testified as follows:

THE CLERK: State your name, please.

THE WITNESS: Scott Lee Armstrong.

DIRECT EXAMINATION

BY MR. DEVICH:

Q Scott, what is your home address and phone number?

A 11831 Laurel Hills Road, Studio City.

Q The phone number?

A 763-2202.

Q How old are you, Scott?

A Fifteen.

Q On June 4, 1966, were you in the area of 11935 Laurel Hills?

A Yes, I was.

Q Around 10:30 in the evening?

A Yes.

Q Did something happen at that location about that time?

A Yes.

[fol. 36] Q Tell the Court what.

A Vince Evans and—

THE COURT: Who?

THE WITNESS: Vince Evans, we were leaning against the car that they used to get away in, and we were talking about—

MR. BERGER: Objection. I move to strike as a conclusion.

THE COURT: Yes. You are getting to the end of the story before the first. Did you see the defendants?

THE WITNESS: Yes. We were leaning against the car, and we heard the door shut, and we heard this running.

I said, "We'd better get off the car. It must be their's."

MR. ROSEN: Just a minute. I will object to anything that he said.

THE COURT: Yes. That will be stricken.

MR. ROSEN: It is hearsay.

THE COURT: Don't say what you said to Vince.

THE WITNESS: O. K.

THE COURT: Just tell us what you saw.

THE WITNESS: Well, I got up from the car.

THE COURT: You were leaning against an automobile?

[fol. 37] THE WITNESS: Yes.

THE COURT: Then you saw or heard?

THE WITNESS: I heard these men running out, and—

THE COURT: How many did you see?

THE WITNESS: Well, I saw four.

THE COURT: Running out of where?

THE WITNESS: Running out of the driveway from the victim's house.

BY MR. DEVICH:

Q Do you know Mr. Georgiade?

A I know him, yes.

Q Do you know that particular house is his house?

A Yes.

Q Then what did you see, Scott?

A Well, saw these four men, running out, and they looked like they were dressed in black, and I saw a gun. So I got up from the car, and I started to walk toward the back of the car, to get the license plate, and just as I got to the back of the car two men came around, and they started pushing us, pushing me.

They held a gun up to me and they said, "Get back and start running down the driveway."

So I turned around and went down the driveway.

Q Could you tell how these four people were [fol. 38] dressed?

A It looked like they were dressed in black. I saw two of them. Two got in the car, and the other two came out to get rid of Vince and I. I saw two. One had a gun,

and I didn't see if the other one had anything, and they were dressed in what looked like black clothes.

Q Scott, I show you People's 1 for identification. Is this similar to the gun that you saw there?

A Yes. It is just the same. Almost, to the best of my ability.

Q Did any of the men have masks?

A No. I didn't see any masks on them. On one I saw, it looked like he had something under his arm, but he went and got in the car.

Q Are there any gentlemen here in court today that you saw coming from that house on that evening?

A The one in the green and the one in the white are the two that came, I think are the two that came, toward us.

THE COURT: Identifying Bader and Baum.

BY MR. DEVICH:

Q What kind of a car was this, Scott?

A It was a, it looked, a very light colored Chevy Impala.

THE COURT: Did you get the license number?

[fol. 39] **THE WITNESS:** No, I didn't. Just as I was getting to the back of the car, that is when they came around.

BY MR. DEVICH:

Q Do you know what year the car was?

A '65. At first I thought it was a '66, but it turned out to be a '65.

Q About what time of the evening was this?

A At 10:30. After they had left I went in and called the police, and just I made the phone call, it was just 10:30.

MR. DEVICH: I have no further questions.

CROSS-EXAMINATION

BY MR. BERGER:

Q Scott, you said you first thought it was a '66. Now you find it's a '65. How did you find out it was a '65?

A Well, I remembered what the car looked like. Just telling my brother what happened, and he asked me what kind of car it was and what the back end looked like, and it just came to be a '65. At first I thought it was a '66. It looked very new.

Q You talked to your brother, and between the both of you you decided it was a 1965 car?

A It was a '65. It was a mistake on my part first, [fol. 40] thinking it was a '66.

MR. BERGER: Nothing further.

CROSS-EXAMINATION

BY MR. NEWMAN:

Q Were there any street lights on that street on which you were standing?

A On the street, on our street there are no lights, but at the base of the street there is one light. This is on Laurel Canyon. There was a light from the victim's house, and a small kitchen light from the house across and down one.

Q What kind of light from the victim's house? Was that the light on the interior of the house?

A No. It was the light on the porch, but the biggest, the most light there that night was coming from the moon. An extremely bright night.

Q You say you thought the gentlemen to my right was dressed in black?

THE COURT: He said he thought they were all dressed in black.

THE WITNESS: This is what it looked like. As they came running out of the driveway, the light was behind him, and they were moving fast. It was black or very dark, is what it looked like.

[fol. 41] BY MR. NEWMAN:

Q The gentleman to my right, was he bareheaded?

A As I remember, he had, I know one of them, the one that had the gun had a sort of a black hat on his head, sort of like a sock or something like that. I am pretty sure it's the one with the gun.

Q When did you go in to make your telephone call to the police?

A Well, they said to go down this driveway, and I went running down the driveway. It's about a 75 foot long driveway. I got to the end, and I knocked on the door at this particular house, and she is a neighbor of mine, but she didn't recognize me.

THE COURT: That is where you made the call from?

THE WITNESS: No. She wouldn't let me in, so I left, and I went home and called.

BY MR. NEWMAN:

Q At your home?

A Yes. About four minutes after.

MR. NEWMAN: No further questions.

CROSS-EXAMINATION

BY MR. ROSEN:

Q Was this car parked no the street?

A Yes, on the street. The house. Then there is a [fol. 42] small bridge. Just the other side of the bridge.

Q How far from the Georgiade house?

A From the house itself, well, from where the driveway is, it's about 25 feet.

Q From the porch light how far?

A From the porch light you have to go down a driveway to the street and down the street. From there I'd say it's about 75 feet from the house to the car.

Q So no illumination from the porch light—

A I can't see the porch light from the street.

Q When all these people rushed down, this occurred in less than 30 seconds time, didn't it?

A Yes.

Q Two of them rushed up to you?

A Well, the first thing I saw was when they got onto the street. This is when I saw them coming out of the driveway. Then they started moving toward the car. This is when I saw them the second, well, I was still

looking at this time. Two got in the car. Another two came around.

Q Came around toward you and your friend?

A Yes, very close to me. This is when I saw them.

Q They told you to get moving?

A Right.

Q And you got moving?

[fol. 43] A Right.

Q This man that you say resembles Bader here to my right, was he wearing anything over his face or head?

A Nothing over his face. It looked like he had a hat on his head.

Q It looked like he had a hat on his head?

A A sailor's hat or something like that.

Q You just got a pretty fast glimpse of him, is that right?

A Well, he was very close to me, because he hit me in the chest.

Q With what?

A With his fist.

Q With his fist?

A Yes.

Q Did he have a gun?

A In the other hand.

Q He had a gun in one hand, and he hit you in the chest with his other hand?

THE COURT: That is what he said.

THE WITNESS: Yes.

THE COURT: That is the way I have got it written.

BY MR. ROSEN:

Q How tall was this man? Was he taller than you?

[fol. 44] A Yes, about approximately six inches taller. The other man was just about as tall as I am. Maybe a little bit shorter.

Q How tall are you?

A Five-six, five seven.

MR. ROSEN: That is all I have.

MR. DEVICH: I have no further questions.
The People call Officer Gastaldo.

ALBERT J. GASTALDO

called as a witness by and on behalf of the People, having been first duly sworn, was examined and testified as follows:

THE CLERK: State your name, please.

THE WITNESS: Albert J. Gastaldo. G-a-s-t-a-l-d-o.

DIRECT EXAMINATION

BY MR. DEVICH:

Q Officer, what is your occupation and assignment?

A Police officer for the City of Los Angeles, assigned to North Hollywood Robbery Detail.

Q Are you one of the investigating officers in this matter?

A I am.

[fol. 45] Q Are you also one of the arresting officers in this matter?

A On one of the defendants I am.

Q What defendant was that?

A Baca.

Q During the course of your investigation, did you have some information on this particular investigation?

A I had some information, yes.

Q What?

A Information that a Van Nuys radio car had made an arrest, and in the arrest, the arrest was made for narcotics, but in the vehicle there was some property that was taken in this particular residence robbery.

MR. BERGER: An objection to this unless it is limited to probable cause.

MR. DEVICH: This is limited to probable cause.

THE COURT: Yes. This is limited to probable cause.

BY MR. DEVICH:

Q Go ahead.

A And two of these people were in custody at Van Nuys.

Q Who were these two people?

A This was the defendant Baum and Bader.

[fol. 46] Q Was there also a car involved in this matter?

A Yes. I checked, and the vehicle that was being driven by Baum or Bader, I don't recall which the driver was, actually belonged to Archie Hill.

Q You indicated some property was in that vehicle at the time, which came from a residential burglary?

A No. Residential robbery. People's Exhibit 6, I believe. The radio.

Q This People's 5 for identification, is that the radio?

A That is it.

Q Go ahead.

A With this I had a conversation first with Mr. Bader. This took place on —

THE COURT: This is for all purposes now?

MR. DEVICH: No, your Honor. This is limited to probable cause.

THE COURT: All right.

MR. ROSEN: Probable cause for what?

MR. DEVICH: There should be probable cause to show the arrest of one of the particular defendants involved, your Honor.

THE COURT: Let's see what it is. I don't know. I have no idea. I can't outguess him.

THE WITNESS: It took place on June 6 at approximately 5:30 P. M. at Van Nuys Jail. Present at that [fol. 47] conversation was Mr. Bader and myself. I advised the defendant that he had a right to counsel, that anything he said could be used against him later at a criminal proceeding, and he did not have to talk to me unless he wanted to.

BY MR. DEVICH:

Q Did you tell him whether or not he had the right to a Public Defender?

A I did not.

Q Who was present?

A The defendant and myself. He in substance told me—

THE COURT: Just a minute.

MR. ROSEN: I am going to object to the conversation, your Honor.

THE COURT: It will be sustained, if it's a confession. I suppose it is.

MR. DEVICH: Our position would be it is not being offered for the purposes of a confession. It is being offered for the purpose of the probable cause to show that it tended to tie up one of the defendants, the defendant Hill, in this matter.

MR. ROSEN: If it's inadmissible—

THE COURT: As to one it would be inadmissible as to all.

MR. ROSEN: It would be inadmissible as to all for [fol. 48] all purposes.

THE COURT: I think so.

BY MR. DEVICH:

Q Did you have an occasion to go to Mr. Hill's residence?

A Yes, prior to this.

Q Prior to the conversation?

A Prior to going to Mr. Hill's residence, I did some further checking.

Q What checking was that?

A I checked with our local field interrogation files at Van Nuys, West Valley, and North Hollywood. I found shake cards, which associated Mr. Hill with Mr. Baum and Bader.

MR. BERGER: An objection to that and a motion to strike as being irrelevant and immaterial and hearsay.

MR. DEVICH: Limited to probable cause.

THE COURT: He can investigate the record to find out if there is any association between men. There is no limit to that.

MR. BERGER: This is limited to probable cause only?

THE COURT: Yes. That is all it is now.

BY MR. DEVICH:

Q Did these field interrogation cards reveal an address?

[fol. 49] A Yes, they did. 1911 Sepulveda Boulevard, apartment number four, as belonging to Mr. Hill.

I further had some information from Sergeant Ide, at Van Nuys Detectives, that these defendants were involved in various robberies throughout the Valley. I was further led to believe that there was additional property from this robbery located at Archie Hill's apartment.

MR. BERGER: I will object to that, your Honor, he was further led to believe.

THE COURT: Yes. You will have to be more explicit. Who led you to believe this?

THE WITNESS: I was led to believe this from the fact that this radio was in the car at the time Baum and Bader were arrested and was merely one piece of property which was taken in this robbery.

THE COURT: Overruled.

THE WITNESS: With this I proceeded to Mr. Hill's apartment.

BY MR. DEVICH:

Q Do you recall what date that was?

A Yes. That was on June 6, 1966, at approximately 10:30, between 10:15 and 10:30 P. M. I was accompanied by Sergeant Ide, of Van Nuys, Olson, Welch, from Van Nuys Narcotics, and myself.

We knocked on the door. Mr. Miller, a Mr. Miller, [fol. 50] opened the door. Immediately I recognized that Mr. Miller closely fit the description of several robberies which we were investigating with this group.

THE COURT: You say Mr. Miller?

THE WITNESS: Yes.

THE COURT: Looked like one of the persons?

THE WITNESS: Like one of the suspects listed on one of the robberies we were investigating.

THE COURT: I see.

THE WITNESS: At the same time—

MR. BERGER: Your Honor, I didn't understand the answer. Was the answer that Mr. Miller looked like Mr. Hill, who you were investigating, or Mr. Miller looked like somebody you were investigating?

THE WITNESS: Looked like a suspect.

At the same time we noticed a revolver.

MR. BERGER: Objection to "we noticed" as being a conclusion of the officer.

THE COURT: Yes. Don't say what your partner saw. What you saw. Did you notice it?

THE WITNESS: At the same time I noticed an automatic revolver with a loaded clip, sitting on the coffee table in the front room of this apartment. Sergeant Ide had informed Mr. Miller he was under arrest for robbery.

We entered the apartment. Under the sofa in the [fol. 51] front room Sergeant Ide removed People's Exhibit number 1.

BY MR. DEVICH:

Q Is that the revolver?

A Yes.

Q Go ahead.

A I went into the bedroom. I recovered People's 2 and 3.

Q The Starter gun and the two knives?

A Yes, sir. Also the camera.

Q People's 4?

A Yes, and the hoods.

Q People's number 6?

A Yes.

MR. DEVICH: Your Honor, at this time may the following be marked People's 7 for identification, two sheets of white paper, with writing on it, bearing the initials AG? May they collectively be marked People's 7 for identification?

THE COURT: So marked.

BY MR. DEVICH:

Q I show you People's 7 for identification. Did you find those in that particular apartment that day?

A Yes, I did.

Q Was there anything in People's 7 that was pertinent to this particular investigation?

[fol. 52] A Yes, sir.

Q What?

A May I read verbatim from People's 7?

Q Go ahead.

A At the top of the first page is the numeral seven. It states: "Friday I went out"—

MR. BERGER: We will object to this as being the best evidence rule. The best evidence is the slip of paper itself.

THE COURT: It is already marked Exhibit 7 for identification. He is just reading it into the record. Overruled.

THE WITNESS: "Friday I went out with Gina. Then Saturday night we went out to hold up a market, but when we got there it was closed, so we had to go to a house. We knocked on the door, and when they answered the door we ran in and I had to hit the man on the head with my gun, because he didn't get down on the floor fast enough. We only got about \$60 from them. We left from there and went to TJ and scored seven keys. On the way back we pulled over at the roadblock, but they only checked the trunk of the car. We got back home about 6:00 in the morning. I went to bed. Then Dick and one of the guys that made this run with us left my apartment with Dick to go and get something to eat. This turned out to be a mistake, because they [fol. 53] got busted for possession of grass."

BY MR. DEVICH:

Q Did you book all these items after you arrested Mr. Miller?

A Yes, sir.

Q Did you find anything in the apartment which further showed that this particular apartment was Mr. Hill's?

A Yes. In the same drawer where I located People's 7 there were rent receipts, numerous stack of rent receipts at this particular apartment, made out to Archie Hill, and there were several other pieces of paper, correspondence, notes from girls, and so forth, all to an Archie or an Archie Hill.

Q I think you indicated you arrested the defendant Baca?

A Yes, I did.

Q When?

A On June 7 of this year at approximately 11:00

P. M.

Q Where did the arrest take place?

A At 14432 Sylvan Street, Van Nuys.

Q Is that the Police Station?

A No, it isn't.

Q What is it?

A It's a red, white, and blue print shop.

[fol. 54] Q Did you have a conversation with Mr. Baca?

A Yes, I did.

Q Was this after or prior to his arrest?

A It was after his arrest.

Q Did you advise him of his constitutional rights?

A Yes, I did.

Q What did you tell him?

A I advised him that he had a right to an attorney, that he didn't have to talk to me unless he wanted to, and that anything he did say to me could be used against him in a subsequent criminal proceeding.

Q Did you indicate to him that at that time he had a right to a Public Defender?

A I did not.

MR. NEWMAN: I move to strike any testimony.

THE COURT: He hasn't said anything yet.

MR. BERGER: May any conversation be limited only to that?

THE COURT: It's not going to be admitted anyhow. Don't worry about it.

MR. DEVICH: I won't take the Court's time, then, by trying to have the statement put in.

THE COURT: No. You are spinning your wheels.

BY MR. DEVICH:

Q Did everything that you testified to occur in the [fol. 55] County of Los Angeles?

A Yes, it did.

MR. DEVICH: I have no further questions.

CROSS-EXAMINATION

BY MR. BERGER:

Q You didn't have a search warrant to search that apartment on that night, did you officer?

A No, sir.

Q You didn't have a warrant for the arrest of Mr. Hill or for any occupant at that apartment, did you?

A No, sir.

Q You didn't have a warrant to search any person who was in that apartment on that evening, did you?

A No, sir.

Q You didn't have permission to enter that apartment either that evening, did you?

A (No response).

Q Did anyone give you permission to go in?

A I don't recall whether Mr. Miller asked us in the apartment or not.

Q Did you have your guns out?

A No.

Q Did you show them your badge?

A I didn't, no.

[fol. 56] Q Did someone show a badge?

A Yes.

Q Who showed a badge?

A Sergeant Ide.

Q You were in plainclothes?

A Yes.

Q At what point did you decide to take the gun out?

A I don't know that I ever took my gun out.

Q How about your partner? Did he ever have a gun out?

A Counsel, I will answer that no, if I may explain.

Q No. That is enough.

THE COURT: You have a right to answer yes or no and explain your answer. That has always been the law.

THE WITNESS: No, we did not have hand guns out. However, we did have, as I recall, two shotguns.

BY MR. BERGER:

Q When you went to the apartment, you were holding a shotgun?

A I wasn't, no.

Q Your partner was?

A One of the men was.

Q How many men were there there?

[fol. 57] A Four.

Q Did they hold them up in the air or pointing them at anyone?

A They were just holding them, pointed to the ground.

Q When you went to that apartment at 1911 that evening, was it your intent to arrest the occupants of that apartment?

A I don't know who the occupants might have been. It was my intention to arrest Archie Hill.

Q You said that you found out a car was registered in Mr. Hill's name, is that correct?

A No, I did not.

Q But you did determine prior to that that Mr. Hill was the owner of a certain vehicle where certain people were stopped, is that correct?

A Yes, sir.

Q What kind of vehicle was that?

A A '57 Buick, two door, black, bearing California license PZV 001.

Q You did not determine this by a check of DMV, did you?

A I did not determine it at all. It was determined by another officer.

Q What is that officer's name?

A I don't recall. It could be one of two.

[fol. 58] Q Did you have a conversation with one of the two officers?

A Yes, I did.

Q He told you a certain vehicle belonged to Mr. Hill, is that correct?

A Yes, sir.

Q You made no further check, is that correct?

A No. I did make further checks.

Q Now, you said you saw the gun that is marked People's 1; I believe the long gun. You said you saw that, sitting on the table?

THE COURT: No. He said he saw an automatic, is what I have got.

BY MR. BERGER:

Q An automatic?

A Yes, sir.

Q Where is that automatic? Is that here in court?

A Yes, it is.

Q This automatic, you said it was loaded and you saw it there and you said it was loaded and had the clip in, is that correct?

A No.

Q What did you see?

A It was sitting on the coffee table with a loaded clip, sitting next to it.

[fol. 59] Q I see. The gun wasn't loaded then to your knowledge, was it?

THE COURT: It couldn't be if it's an automatic. You have to have the clip in.

BY MR. BERGER:

Q Did you see this when you were inside the apartment or outside the apartment?

A Outside the apartment.

Q It was at that time that you arrested, you went into the premises and arrested Mr. Hill?

A Yes. That was one of the events that took place.

Q Prior to this time someone had invited you in or was it after you saw the automatic sitting on the table that someone decided to invite you in?

A I don't know that we were ever invited in. I don't recall.

Q When you did go in, it was not because of an invitation? It was because you walked in, is that correct?

THE COURT: He says he doesn't know. He just got through saying.

BY MR. BERGER:

Q You saw a revolver with a loaded clip on the table, is that correct?

A That is correct.

[fol. 60] Q What happened next?

A We arrested Mr. Miller.

Q You went into the apartment and arrested Mr. Miller?

A Yes, sir.

Q Did you arrest anyone else?

A At that time?

Q Yes, at that time.

A No. There was no one else in the apartment.

Q Did you determine at that time that Mr. Miller was renting this apartment?

A No.

Q Did you determine who was renting the apartment at that time?

A Shortly thereafter.

Q That was during the search, is that correct?

A Yes.

Q Neither Mr. Hill nor Mr. Miller gave you any permission to search that apartment, is that correct?

A No, sir.

Q That is not correct, or they did not give you permission to search it?

A We did not have permission.

MR. BERGER: Nothing further.

[fol. 61]

CROSS-EXAMINATION

BY MR. NEWMAN:

Q Did you have a warrant for the arrest of either the defendant Baum or Baca?

A I did not arrest Baum, and I had no warrant for Mr. Baca.

MR. NEWMAN: No further questions.

CROSS-EXAMINATION

BY MR. ROSEN:

Q You didn't arrest Bader either, did you?

A No, sir.

MR. ROSEN: That is all.

MR. DEVICH: I have nothing further of this witness.

May the following be marked People's number 8 for identification: Two Los Angeles Police Department exemplar cards, bearing the name Archie W. Hill? May they be marked collectively People's 8 for identification?

THE COURT: So marked.

MR. DEVICH: Will counsel stipulate, for the purpose of the preliminary hearing only, that Roy Kiser was called, sworn, and testified that he is a qualified handwriting analyst for the Los Angeles Police Department, and that he did make a comparison between People's 7 and People's 8 collectively for identification and formed [fol. 62] the opinion that they were made by one and the same person.

MR. BERGER: So stipulated for the purpose of this preliminary hearing only.

MR. DEVICH: Will counsel further stipulate Officer Klesper, K-l-e-s-p-e-r, 3513, was called, sworn, and testified that he was present on the date of December 5, 1965, and observed defendant Hill fill out the Los Angeles Police Department exemplar card part of People's 8 for identification and, finally, that Officer Jelenic, Los Angeles Police Department, 5250, was called, sworn, and did testify that on June 9, 1966, he was present when defendant Hill made out the Los Angeles Police Department exemplar card, bearing the name Archie W. Hill?

MR. BERGER: So stipulated for the purpose of the preliminary hearing only.

MR. NEWMAN: So stipulated for the purpose of the preliminary hearing only.

MR. ROSEN: It doesn't apply to my client. I don't have to.

MR. DEVICH: May People's 1 through 8 be received in evidence, your Honor?

THE COURT: Do you want to make any formal objection?

MR. BERGER: I will make an objection on behalf of my client, Mr. Hill. There will be an objection on [fol. 63] behalf of Mr. Hill that the guns, the letter, I believe the camera, any of the things found in the apartment were the product of an unlawful search and seizure, and a motion to quash.

THE COURT: Motion denied.

MR. NEWMAN: I move to dismiss as against Jerry Edward Baca on the ground there is no testimony to show even probable cause for binding him over, your Honor. His name was not mentioned in the diary and there was no identification.

THE COURT: Overruled.

MR. ROSEN: I submit it, your Honor, but I must agree with counsel on behalf of Baca that there is no evidence by any of the witnesses tying Baca in, nor is there any statement tying Baca in.

MR. NEWMAN: Your Honor, in the diary, as a matter of fact, certain names are mentioned. There is no mention at all of Jerry Edward Baca. He was not in the apartment at the time, your Honor. He was not identified by any of the witnesses, your Honor.

MR. DEVICH: May counsel approach the bench?

THE COURT: Yes.

(Conference at the bench).

THE COURT: Motion as to Baca will be granted.

MR. BERGER: The same motion will be made on behalf of my client, Mr. Hill, a motion to dismiss on [fol. 64] the ground that there is no corpus delicti shown. There was no one who could identify him at the scene. No one could place him at the scene.

THE COURT: That will be denied.

The other defendants Baum, Bader, and Hill will stand. They are held to answer.

Their arraignment will be in the Superior Court of this County on July 15, 1966, at 9:00 A. M. in Department 100. Five thousand dollar bail for each.

MR. BERGER: There will be a motion on bail, your Honor, on behalf of Mr. Hill.

THE COURT: In view of what has been said about their proclivities to rob people in the Valley and their activities, I will deny the motion. I will not release fellows out to commit more robberies.

MR. BERGER: The only ground is that the defendant Hill has no prior record that I know of, and the fact of the weakness of the prosecution's case.

THE COURT: That hasn't anything to do with it, the weakness of the prosecution's case. If it was that weak, I wouldn't hold him. They are all held on \$5,000 bail.

MR. BERGER: What date is that, your Honor?

THE COURT: July 15.

MR. DEVICH: The People have one other motion to make, if agreeable with counsel, to substitute.

[fol. 65] THE COURT: The Exhibits will all be admitted.

MR. DEVICH: A motion to substitute People's number 7, the two white pieces of paper, with photostatic copies of the same writings. They will be available at the time of the Superior Court trial.

THE COURT: Is that all right, counsel?

MR. ROSEN: Yes.

MR. BERGER: Yes.

IN THE MUNICIPAL COURT OF LOS ANGELES
JUDICIAL DISTRICT, COUNTY OF LOS ANGELES,
STATE OF CALIFORNIA

DIVISION NO. 68 HON. GEORGE B. ROSS, JUDGE

No. 900,707

THE PEOPLE OF THE STATE OF CALIFORNIA, PLAINTIFF
vs.

ALFRED ELMO BAUM, RICHARD JOSEPH BADER, JERRY
EDWARD BACA, (Dismissed), ARCHIE WILLIAM HILL,
JR., DEFENDANTS

COMMITMENT—July 16, 1966

IT APPEARING TO ME that the offense in the within complaint mentioned, to wit: CT. I, II Robbery, violation of Section 211 of the Penal Code, CT. III Kidnaping for the Purpose of Robbery, violation of Section 209 P.C., felonies, have been committed and there is sufficient cause to believe the within-named ALFRED ELMO BAUM, RICHARD JOSEPH BADER, and ARCHIE WILLIAM HILL, JR., guilty thereof, I order that they be held to answer to the same and that they be admitted to bail in the sum of \$5,000 and that they be committed to the custody of the Sheriff of Los Angeles County until they give such bail.

DATED this 1st day of July, 1966.

GEORGE B. Ross
Judge of the Municipal Court
Los Angeles Judicial District
County of Los Angeles
State of California
COMMMITTING MAGISTRATE

[fol. 4]

IN THE DISTRICT COURT OF APPEALS OF THE
STATE OF CALIFORNIA, SECOND
APPELLATE DISTRICT

LOS ANGELES, CALIFORNIA, THURSDAY,
OCTOBER 6, 1966, 9:00 A.M.

THE COURT: Hill. The matter has heretofore been submitted on the transcript. The Court has read and considered the transcript.

MR. HERZBRUN: Your Honor, the transcript appears on the Court's bench.

THE COURT: Anything additional?

MR. HERZBRUN: Yes. The People will call as an additional witness a witness who did testify at the preliminary hearing in this matter, Officer Gastaldo. Please take the stand.

ALBERT J. GASTALDO,

called as a witness by and in behalf of the People, being first duly sworn, testified as follows:

THE CLERK: Please be seated and state your name.

THE WITNESS: Albert J. Gastaldo, G-a-s-t-a-l-d-o.

MR. HERZBRUN: Let me say first as a kind of opening statement for the record, we are aware, of course, that the Court has read and considered at an earlier time, not for the purposes of this case but in another case, a transcript on a 995 motion in which the connection between the defendant and that particular crime was to be established by evidence in a certain diary, and the Court did find on the basis of that trans-
[fol. 5] script that the diary was obtained under a search that was an illegal search under current appellate court decisions. However, that transcript is not in evidence here. We intend here to put on the basis of this transcript which is much fuller in that respect. I particularly called this officer here so that we could have a full disclosure of all of the circumstances in that respect, be-

cause that is the central defense here in effect, and the situation is one that is all too current in these cases where it is really the officer who may be on trial here. For that purpose we have called Officer Gastaldo to the stand and I intend to ask him questions and open him up for cross examination or such questions as the Court may desire to put to him on that issue.

MR. BERGER: Might I say this, your Honor, since we are making opening statements—I think the evidence will show that this defendant was only arrested once. There happened to be two transcripts but there was only one arrest made, only one search made, only one seizure made; so I hope your Honor will keep that in mind no matter what evidence comes out—this man was only arrested once and any divergence between the two transcripts and what the officer says would bear upon the officer as not being credible.

THE COURT: Of course I had to act on the first transcript solely on what was in that transcript. I don't [fol. 6] know what might have been adduced if the People had seen fit to call the officer at that time, and I am not going to pre-judge the officer's testimony merely because we have a case where the defendant Hill apparently got the benefit. Even the People can learn, you know, Mr. Berger.

DIRECT EXAMINATION

BY MR. HERZBRUN:

Q For the record, Mr. Gastaldo, your occupation and assignment?

A Police officer for the City of Los Angeles assigned to North Hollywood Robbery Detail.

Q How long have you been a policeman?

A 11 years approximately.

Q You were one of the officers that obtained this diary that is referred to in the transcript of the preliminary hearing, is that correct?

A Yes, sir.

THE COURT: Just to correct the record, I think the transcript indicates it is only two pages of the diary, is that correct, Officer?

THE WITNESS: Yes.

MR. HERZBRUN: Yes. I am referring now to that sheaf of papers of which the two pages are quoted in the transcript.

THE WITNESS: Yes, sir.

Q BY MR. HERZBRUN: Now at what location was that found?

[fol. 7] A Apartment 4 located at 9311 Sepulveda Boulevard.

Q And what brought you to that location initially?

May I say that any testimony in this regard is to qualify the witness.

THE COURT: Yes, it will be so indicated.

THE WITNESS: Several things led me to believe that the defendant was involved in some robberies in the Valley and one—

Q BY MR. HERZBRUN: Would you relate those—

A One robbery in particular that I was investigating.

Q Which one was that?

A Victim Nicholas George Iade, which occurred at 11935 Laurel Hills Road, Studio City.

Q In connection with that particular robbery, the George Iade matter, did you have some kind of a description?

A Yes, we did.

Q What did that consist of?

A It consisted of four male Caucasians in age group from 21 to 26, all ranging in heights from 5-foot-9 to 5-foot-11; the hair on two of them was dark brown in color, the other two were wearing hoods, had a complete description of the weapons, had a description of a vehicle which was used, which was seen as the getaway car.

[fol. 8] Q What kind of a description did you have on that vehicle?

A Late model Chevrolet, light in color, '65.

Q Any license number?

A No.

Q All right, now, what if any information did you have regarding the location of this apartment 4?

A I determined the location of the apartment by checking out field interrogation cards in which Mr. Hill was talked to by Officers in the field in the company of Mr. Baum and Bader.

MR. BERGER: Objected to as being a conclusion of the officer unless he was present. Motion to strike.

THE COURT: Read the answer again, please.

(Reporter reads answer requested.)

MR. BERGER: Also incompetent, and also hearsay.

THE COURT: Everything after the word "card" will be stricken.

Q BY MR. HERZBRUN: I take it from this card you received certain information, is that right?

A Yes, sir.

Q And what information did you receive from this card?

This is strictly on the issue of probable cause, your Honor.

[fol. 9] What information did this card contain?

A A physical description of Mr. Hill; his address, his birthdate; his business address and the type of vehicle that he had, and the circumstances for which the card was made.

Q You have given us the description you got from this Mr. George Jade matter. Would you tell us what description you got from this card in more detail?

A Going by memory, as I recall he was described as a male Caucasian, either 19 or 20, 5 feet 10 inches, 155, brown and brown.

Q Was there a location indicated on the card?

A Yes. There was more than one card, Counsel, and I don't recall the locations where they were made.

Q Did one of them give you this address, Apartment 4?

A Yes, it did.

Q Was there any information in those cards regarding any vehicle?

A On one of the cards there was.

Q Do you recall what that was?

A Yes, it was a '57 Buick; as I recall it was a two-door black; it had the license number and I checked further and found that it was also the same car that was impounded in our lot on a previous arrest.

Q Now before you went to that location did you [fol. 10] have any other information from fellow officers regarding either the defendant Hill or the location of this apartment 4 on Sepulveda?

A Yes. I had some information from Sergeant Ide who works Robbery in Van Nuys Division.

Q He's a fellow investigating officer of yours, is that right?

A Yes, sir.

Q All right, what information did you have from him regarding this location?

A First, that he had had several robberies in his area and in which the physical descriptions on my robbery, the George Jade robbery, and his, were almost identical; he had told me that he had received some unconfirmed information that Mr. Hill and some other people had some guns in their possession before my crime had occurred; he also informed me that Mr. Baum and Bader were in custody at Van Nuys on a marijuana charge; that the car that they were driving when they were arrested was checked and found to belong to Mr. Hill.

He told me that there was some property removed from the vehicle.

Q Did he indicate what kind of vehicle that was?

A Yes, it was the same 1957 Buick that I was talking about earlier. The license number I don't recall right now.

[fol. 11] Q The one that had been impounded in your lot?

A Yes.

Q Any other information?

(A brief recess to dispose of an unrelated matter.)

THE COURT: You may proceed.

THE WITNESS: Then I checked and found that one of the articles removed from Mr. Baum and Bader's car on their arrest under the marijuana charge was actually

a piece of property which was taken in the robbery of the George Iade residence in Studio City.

Q BY MR. HERZBRUN: What article was that?

A As I recall it was a radio.

Q How did you make that check?

A I checked with the victim. Then I had a discussion with both Mr. Baum and Mr. Bader.

Q Did you get any information from them concerning this either Hill or the location?

A Yes, both.

Q What information did you receive from them?

A Well, from each of them I received a full statement as to what occurred at various robberies and who was implicated in them, and that I could go to Mr. Hill's apartment—they gave me the address again, informed me that the guns used in the robbery were there and also that the remaining property should be in his apartment.

[fol. 12] Q What address did they give you?

A 9311 Sepulveda, and Mr. Bader also informed me that he was sharing that apartment with Mr. Hill.

Q All right, then when did you go to the apartment?

A I went to his apartment on June 6th of this year. As I recall it was in the evening. I don't recall the time.

Q That was your first time at the apartment?

A Yes, it was.

Q You were there more than two times, is that right?

A No, I was only there one time.

Q Just that one time?

A Yes.

Q All right, and approximately what time was that in the evening?

A I'd have to check my report, Counsel.

Q Do you have your report with you?

A Yes.

Q These reports were made by you at the time or shortly after the time you were there?

A Yes, they were.

Approximately 8:15 is when we knocked on the door.

Q In the evening, is that right?

[fol. 13] A Yes.

Q And—

THE COURT: Just a minute. Did you say "pounded" on the door?

THE WITNESS: "Knocked."

Q BY MR. HERZBRUN: You said "we"—I take it there were others with you, is that right?

A Yes, that's right.

Q Who was with you?

A Sergeant Ide from Van Nuys, Sergeant Olsen from Van Nuys Narcotics, Sergeant Welsh from Van Nuys Narcotics.

Q Were you in uniform at the time?

A No, sir.

Q All right, when you knocked on the door what happened next?

A Well, before I knocked on the door I checked something further.

Q What did you check?

A I determined that Apartment No. 4 was being occupied by an Archie Hill.

Q How did you check that?

A By mail box and one of the officers asked one of them—as I recall, children that were in the area of the apartment house. It was a simulyoneous thing.

Q Then after you knocked what happened?

[fol. 14] A The door was opened and a person who fit the description exactly of Archie Hill, as I had received it from both the cards and from Baum and Bader, answered the door.

Q Let me ask this—had you yourself on any previous investigations or at any time ever seen Mr. Hill? Had you personally ever seen him?

A I had no idea what he looked like.

Q Other than of course the descriptions you had—but you yourself had never seen him before?

A Right.

Q Did you identify yourself as police officers?

A Yes.

Q Did you tell this individual what you were there for?

A Yes, we did eventually.

Q At the time when he answered the door what did you do?

A We placed him under arrest for robbery.

Q At that time you thought you had Hill, is that correct?

A Yes.

Q All right. Did you enter the home then?

A Yes.

Q The apartment, I should say. Was there anybody else in the apartment?

[fol. 15] A No, sir.

Q Briefly what kind of an apartment is this? How many rooms, more or less?

A There was a living room, kitchen area, one bedroom and a bath.

Q When you checked the mail box did you find any other names on that mail box earlier, other than Hill's?

A No, sir.

Q Incident to your arrest of this individual did you make any search of the immediate premises there?

A Yes, we did.

Q Did you find anything indicating or that might indicate that Hill resided there?

A Yes, there were numerous—

Q What did you find?

A Numerous rent receipts, personal correspondence, all in the name of Archie Hill and also in the name of Dick Bader in another location. We also found property which was taken in the George Iade robbery in the apartment. Found guns of the type which were used in the robbery, the George Iade residence; also knives.

Q Did you have any conversation with the man you arrested there? Did you ask him whether he was Hill, for example?

A Yes, we did.

Q What did he say?

[fol. 16] A He said that his name was Miller and that he didn't live there, and that he had no knowledge of what was in the apartment; he had never seen any guns; to his knowledge he knew nothing about them. I asked

him how he could not have any knowledge when prior to our arresting him we observed an automatic laying on the coffee table in plain sight and fully loaded clip right next to it—

Q Did he reply to that?

A Yes, he did.

MR. BERGER: Your Honor, might I inquire at this time for what probable cause this evidence is being sought to be introduced at this time? Apparently there's already been an entry and there's been an arrest, so I was wondering what the District Attorney had in mind at this point.

THE COURT: Miller was in fact arrested and the information which the officer obtained from Miller might very well have justified a further search. I don't know what the evidence is going to reveal and I will admit it now for the very limited purposes of ascertaining the state of mind of the officer subject to a motion to strike.

MR. HERZBRUN: Will you please read the last question back?

(Reporter reads question and answer)

Q (To reporter) That is in reference to the gun?

THE REPORTER: That is correct.

Q What did he say with reference to the gun?

[fol. 17] A He made a reply, Counsel, but I don't recall what it was.

Q Did you ask him any questions as to whether Hill was, or what he was doing there, or anything of that sort?

A First I questioned him as to his identity, so as to make sure he was not Mr. Hill; he told me his name was Miller; that he didn't know where Archie Hill was; that Archie Hill did in fact own the apartment there, or lived in the apartment, and that he was just sitting around waiting for him; that to his knowledge there was no one else in the apartment but him.

Q Did he say how he got into the apartment?

A No, he did not.

Q Did you ask him that?

A Yes.

Q Do you recall whether he replied at all?

A Yes, he said that he just came in and was waiting for Mr. Hill.

Q Incidentally, is there a lock on the door to the apartment?

A Yes, there is.

THE COURT: Did you ask him if he had a key?

THE WITNESS: No, sir, I did not. I don't recall if I did.

Q BY MR. HERZBRUN: Did he produce any identification? [fol. 18]

A Yes, he produced some type of identification which showed him to be Mr. Miller. Exactly what it was right now I don't recall.

Q Now, at some time you located these papers that are in the transcript here of the preliminary hearing that come from a diary. When did you locate those? Before you questioned Mr. Miller or after or when?

A After.

Q And was it after you had found these rent receipts and all in the name of Hill?

A Yes.

Q And physically in the apartment where were they located? Where were they found?

A In a bedroom dresser drawer and I might add the right-hand side, because the left—

THE COURT: When you say "they" are you referring to the two pages of the diary or the diary or the rent receipts?

THE WITNESS: All of it. It was all in one drawer. All papers, all types of correspondence were in this particular drawer.

THE COURT: What specific charge did you arrest Miller on?

THE WITNESS: Robbery.

Q BY MR. HERZBRUN: You arrested him on the name of Hill at that time?

[fol. 19] A Well, we placed him under arrest and determined who he was later.

Q At any time did you ask him whether you might search the apartment? Any conversation along that line?

A No, sir. Immediately after the arrest he was pushed aside and we made a fast search of the apartment to determine there was no one else hiding.

Q But from there on, when you made a more detailed search for identification and the like, at that time did you ask him for permission to do so?

A No, sir.

Q And did he say anything to you asking that you not make a search?

A No, he did not.

Q Then I take it you transported him to the station from there, is that right?

A Yes, sir.

Q How long were you in the apartment altogether, more or less?

A Probably a couple of hours.

Q In that time did anyone come to the apartment?

A Numerous people came to the apartment.

Q Anybody identifying themselves as living there?

A No.

MR. HERZBRUN: Thank you. No further questions.

[fol. 20] CROSS EXAMINATION

BY MR. BERGER:

Q Officer, for what period of time did you accumulate this information pertaining to Mr. Hill? How long did it take you to accumulate this information? You said you had a card, you had a conversation with someone, an investigation—over what period of time did you accumulate this information?

A Probably a matter of six or seven hours.

Q Did you have a search warrant when you went to the house of Mr. Hill?

A No, sir.

Q Did you have a warrant for the arrest of Mr. Hill?

A No, sir.

Q Did you have a warrant either to search the premises or to search Mr. Hill?

A No, sir.

Q This man, this Mr. Miller you arrested, you said he looked like Mr. Hill, is that correct?

A Well, description-wise, yes.

Q He was about 6-1 or 6-2, wasn't he?

A As I recall he was 6-foot even.

Q How tall is Mr. Hill?

A Supposedly he's 5-10.

Q Did this Mr. Miller weight more or less than Mr. [fol. 21] Hill? Was he somewhat heavier?

A As I recall his weight was about 10 pounds heavier, yes.

Q Was he darker or lighter complected?

A I don't recall.

Q Did he have darker or lighter hair?

A I think his hair was brown. It may have been a little lighter.

Q Now, at the time you ascertained that Mr. Miller was Mr. Miller, you hadn't searched the apartment and found the diary, had you?

A I had, or had not?

Q Had not. You ascertained he was Mr. Miller, then you searched and found the diary, isn't that correct?

A Yes. However, it may have been simultaneous.

Q Didn't you on direct examination say that you ascertained the man was Mr. Miller, then at a later time you found the diary?

A Made a detailed search after that, yes.

Q And there was nothing at all—strike that. Mr. Miller at no time represented that it was his apartment, did he?

A No, he did not.

Q And you at that time had it from your information and your belief that, and from the investigation which you had formerly pursued, that this was Mr. Hill's [fol. 22] apartment, isn't that correct?

A With Mr. Bader.

Q Well, this man didn't look like Mr. Bader, did he?

A I knew where Mr. Bader was, Counsel.

Q Well, this man didn't look like Mr. Bader, did he? You knew he wasn't Mr. Bader, didn't you?

A Yes.

Q You didn't release Mr. Miller did you?

A No, I did not.

Q You kept Mr. Miller in custody, did you not?

A Yes, sir.

Q And Mr. Miller was not allegedly at that time involved in any of the robberies which you were investigating in relation to Mr. Hill, was he?

A Is part of your question what I found out later? Two days later? Or what I knew at the time?

Q Strike that. At the time that you arrested Mr. Miller you weren't investigating a Mr. Miller or you didn't have any knowledge of a Mr. Miller regarding this robbery which Mr. Hill was allegedly involved in, were you?

A I could have been, yes.

Q Were you? Don't tell me what you could have been. Were you?

A As far as I knew at the time I was.

Q Oh, Mr. Miller was involved in the robbery at [fol. 23] the liquor store?

A As far as I knew he was.

Q What do you mean as far as you knew?

A Because he matched the description on those robberies as far as Mr. Hill and his companions.

Q Then you are saying that any male Caucasian about the height of 5-11 with brown hair living in the Valley area would be a suspect, is that what you are saying, Officer?

MR. HERZBRUN: Objection. Argumentative.

THE COURT: Sustained.

Q BY MR. BERGER: Had Mr. Miller's name ever come up in the investigation of the robbery of this liquor store which you were investigating?

A Prior to my going to the apartment?

Q Yes.

A No.

Q By the way, Sergeant Ide was with you when you went into the apartment, was he not?

A Yes, sir.

MR. BERGER: I have nothing further.

REDIRECT EXAMINATION

BY MR. HERZBRUN:

Q Just one question if I may. Defense counsel has indicated in his words what time you ascertained that [fol. 24] the man you arrested was Miller. Miller I take it had identified himself as Miller but you didn't ascertain that he was Miller until after you had taken him to the station, is that correct?

A I thoroughly checked it out and was aware of it approximately a day and a half later.

MR. HERZBRUN: Thank you. No further questions.

RECROSS EXAMINATION

BY MR. BERGER:

Q You said that you had a conversation with Mr. Miller and he identified himself as Mr. Miller, is that correct?

A He did.

Q Did you ask him for further identification?

A Yes, sir.

Q Did he show you further identification?

A He produced identification in the name of Miller.

Q What kind of identification did he produce?

A I don't recall.

Q Was it a driver's license?

A It could have been.

Q And it could have been a draft card too, couldn't it have been?

A It could have been.

Q So to the best of your knowledge at that time this [fol. 25] was Mr. Miller, is that not true?

A No. It was a man purporting to be Mr. Miller.

Q With identification of Mr. Miller?

A Yes.

Q Did his description fit the description he had on his identification?

A I don't recall.

Q Did you check it?

A Later I checked it.

Q How was he booked? As Mr. Hill or Mr. Miller?

A He was booked as Mr. Miller.

Q How was he arrested, as—strike that.

After you had ascertained that was Mr. Miller, did you ask this Mr. Miller for permission to search the apartment?

A No.

Q And the reason you didn't ask him for permission to search the apartment was because you knew he couldn't give you permission to search the apartment, isn't that true?

A I knew nothing of the sort at the time.

Q You knew he wasn't living there?

A No, I didn't.

Q You didn't see any of his clothes there?

A I didn't know who he was then.

Q He had showed you identification with the name [fol. 26] of Miller on it?

A He certainly did. And it didn't prove anything to me.

MR. BERGER: I have nothing further.

MR. HERZBRUN: Nothing further.

THE COURT: You may step down. Do you have any further testimony?

MR. HERZBRUN: No, your Honor.

MR. BERGER: No, your Honor.

MR. HERZBRUN: May the witness be excused?

THE COURT: Yes, the witness may be excused.

* * * *

[fol. 30] THE COURT: I was going to make an observation and maybe it won't be necessary.

The whole question here is one which I have not seen raised in any other case, nor has research in connection generally with this problem revealed it. Now, I believe the officer's testimony. I think he gave us honest answers, that he didn't give any answers when he didn't have any—he said he didn't recall—and the Court noted that there was certainly a minimum reference to any past recorded recollection by the witness officer to refresh his memory. The description of the defendant Hill, as is [fol. 31] usually the case in all these matters of identification by lay people, was quite general.

There isn't a great deal of difference in ten pounds—it all depends on where it is. The difference between 5-foot-10 and 6-foot-1 inch is not readily ascertainable. It's within an area of judgment which the very nature of the judgment itself predicates some leeway.

Now the sole question here is—and I think we can take judicial notice of the fact—that those who are apprehended and are arrested many times attempt to avoid arrest by giving false identification. Now here we do not know the nature of the identification which was given, but apparently the officer at least did not indicate that it was spurious in character; it was the kind of identification which was ordinarily used. But being a police officer he has had lots of experience and in his own mind—and I am not saying justifiably—he may have formed the conclusion that a false identification had in fact been made.

Now the only thing that bothers me then—and I make these statements to raise the issue—the issue is simply where there is affirmative evidence that the apartment belongs to a known individual—in this case there is no question but that the apartment was identified as Mr. Hill's, and this fact was corroborated from the mail box and by questioning residents in the area; granted that they were children, but I think sufficient investigation to [fol. 32] put the officer on notice that at least the person who had dominion of the apartment was a man by the name of Hill.

Query, if under those circumstances if the good faith which I am now assuming existed, for the purpose of raising the point, in the officer's mind that the identification given by Miller was not true, does this justify a total and complete search as was made? Now, with the suspicion that this might be a phony identification, and that the arrest was made of this person who identified himself as Miller, I think would have justified the search that was made to be certain that the apartment was empty and that there were no other persons in the apartment in whom the officer had a legitimate interest. But here we go prowling around in drawers and other receptacles.

* * * *

[fol. 37]

LOS ANGELES, CALIFORNIA, THURSDAY,
OCTOBER 20, 1966, 9:00 A.M.

THE COURT: Hill. No. 6 on the trial calendar.

This matter was taken under submission for the purpose of giving counsel an opportunity to argue the effect of mistaken identity on the admissibility of certain written statements.

Do counsel desire to argue the matter any further?

MR. HERZBRUN: No, your Honor.

We submit it.

MR. BERGER: We submit the matter, your Honor.

THE COURT: All right. The Court had prepared a transcript of the proceedings of the testimony taken the last time. I have fully reviewed the evidence. I have determined that the officer in good faith believed that the defendant, or that the person who was arrested—not the defendant in this case—was believed by the officer in good faith to be Mr. Hill, and that whether or not this document consisted of two pages of the private diary of Mr. Hill should be admitted depends on whether or not at the time of the arrest and the search of the premises, the officer acted in good faith.

Now in making this determination I am fully aware of the consequences to Mr. Hill and I am fully aware [fol. 38] of the fact that the ruling opens a Pandora's Box insofar as the rights of private citizens in their homes are concerned. But to me the evidence is clear that the officer in good faith believed the third party to be Mr. Hill; there were not sufficient discrepancies in the descriptions which would fit Hill or the third party to say that the officer's conclusion was unreasonable; the officer was not responsible for the booking procedures which would book the defendant under the name which he gave, the validity of which identification it appears quite clearly to the Court from the transcript did not impress the officer. For that reason the motion to suppress the diary pages will be denied.

* * * *

IN THE
SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

Department No. 106

Present Hon. VERNON P. SPENCER, Judge

325651

THE PEOPLE OF THE STATE OF CALIFORNIA

vs.

ARCHIE WILLIAM HILL, JR.

MINUTES—October 20, 1966

Trial is resumed. Deputy District Attorney H. Herzbrun and the Defendant with counsel L. Berger, present. Defendant's motion to suppress "Diary Pages" is denied. All rest. Defendant is found "Guilty" as charged of all counts. Probation report is ordered. Probation and sentence is continued to November 16, 1966, 9:00 AM in Department 106. Defendant's motion for new trial is set for same date, same time. Transcript of proceedings of October 7, 1966, is delivered to District Attorney for safe keeping. Remanded.

IN THE
SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

Department No. 106

Present Hon. VERNON P. SPENCER, Judge

Case No. 325651

THE PEOPLE OF THE STATE OF CALIFORNIA

vs.

ARCHIE WILLIAM HILL, JR.

APPEARANCES:

(Parties and Counsel checked if present.
Counsel shown opposite parties represented.)

EVELLE J. YOUNGER, District Attorney, by
J. C. GALLIANO, Deputy

E. J. HOVDEN, Public Defender, by
L. BERGER, Deputy

JUDGEMENT—November 16, 1966

Motion for new trial is denied. Each Count: Probation denied. Sentenced as indicated.

Whereas the said defendant having been duly found guilty in this court of the crime of ROBBERY (Sec. 211 PC), a felony, as charged in each of the counts 1 and 2 of the information and KIDNAPING FOR THE PURPOSE OF ROBBERY (Sec 209 PC), a felony, as charged in count 3 (no degree fixed) (no disposition having been made as to issue of being armed)

It is Therefore Ordered, Adjudged and Decreed that the said defendant be punished by imprisonment in the State Prison for the term prescribed by law, on said counts.

Sentences as to counts 1, 2 and 9 are ordered to run CONCURRENTLY with each other.

It is further Ordered that the defendant be remanded into the custody of the Sheriff of the County of Los Angeles, to be by him delivered into the custody of the Director of Corrections at the California State Prison at Chino.

IN THE
SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

106 DEC 2 1966

325651

ARCHIE W. HILL, JR., Booking Number 396-004, November
22, 1966.

Case No. 900 654
900 661

Charge 211 PC
209 PC

PEOPLE OF STATE OF CALIF.

v.

ARCHIE W. HILL, JR.
396-004

NOTICE OF APPEAL—filed November 25, 1966

I'm not sure of which case number 900 654 or 900 661 but this appeal is for the one I was convicted of on the date of November 16, 1966 in Division 106.

/s/ Archie W. Hill, Jr.

IN THE
SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

S.C. No. 900 654 or 900 661

D.A. No. 396-004

THE PEOPLE OF THE STATE OF CALIF.

v.

ARCHIE W. HILL, JR., DEFENDANT

INFORMATION

ROBBERY (Sec. 211 PC) 2 cts.
(Sec. 209 PC) 1 ct.

NOTICE OF APPEAL

I'm not sure which of these two case numbers is the one needed for this notice. Which ever I was found guilty on, on the date of November 16th, 1966 in court 106 is the correct case number.

I solemnly declare under penalty of perjury that the facts stated herein are true. (CCP 2097)

/s/ Archie W. Hill, Jr.
Petitioner

IN THE
DISTRICT COURT OF APPEAL OF THE STATE OF
CALIFORNIA, SECOND APPELLATE DISTRICT,
DIVISION 3

Cr. 13180

THE PEOPLE, PLAINTIFF AND RESPONDENT

v.

ARCHIE WILLIAM HILL, JR., DEFENDANT AND APPELLANT

OPINION—March 28, 1968.

Hearing Granted May 22, 1968.

The Superior Court of Los Angeles County, Vernon P. Spencer, J., found defendant guilty of robbery and of kidnapping for the purpose of robbery, and defendant appealed. The Court of Appeal, Ford, P. J., held that search without a warrant of defendant's apartment incidental to the arrest therein of another whom the police mistakenly believed to be defendant was improper, and the incriminating evidence seized by the police was inadmissible.

Judgment reversed.

Search without a warrant of defendant's apartment incidental to the arrest therein of another whom the police mistakenly believed to be defendant was improper, and the incriminating evidence seized by the police was inadmissible in subsequent prosecution of defendant for robbery and for kidnapping for the purpose of robbery. West's Ann.Pen.Code, §§ 209, 211.

Joseph Amato, Palos Verdes Estates, under appointment by the Court of Appeal, for appellant.

Thomas C. Lynch, Atty. Gen., Elizabeth Miller and Barry H. Lawrence, Deputy Attys. Gen., for respondent.

FORD, Presiding Justice.

The defendant has appealed from a judgment of conviction of the crimes of robbery (Pen.Code, § 211) and kidnaping for the purpose of robbery (Pen.Code, § 209). The eyewitnesses to the offenses were unable to identify him, the only substantial evidence of his participation being statements contained in two pages of a diary shown to be in his handwriting and stolen property and other objects found in the bedroom of his apartment. The question presented is whether the police obtained such evidence by means of an illegal search of the defendant's apartment in his absence. The search immediately followed the arrest in the apartment of a man named Miller, whom the police believed to be the defendant Hill.

On June 6, 1966, Officer Gastaldo and three other officers went to the defendant's apartment. Officer Gastaldo's purpose was to arrest the defendant, Archie Hill. He had neither a warrant for the arrest of Hill nor a search warrant. Officer Gastaldo had information as to Hill's address and his physical description. He had been informed that Hill and a man named Bader occupied the apartment; the officer knew where Mr. Bader then was.

Officer Gastaldo determined that apartment No. 4 was being occupied by Hill by checking the mail box, on which only Hill's name appeared. One of the other officers made inquiry of children in the area. Officer Gastaldo then knocked on the door at approximately 8:15 p.m. Part of the officer's testimony was: "The door was opened and a person who fit the description exactly of Archie Hill, as I had received it from both the cards and from Baum and Bader [subsequently charged with the offenses jointly with Hill], answered the door. * * * We placed him under arrest for robbery." The officers then searched the premises and found, among other things, numerous rent receipts and personal correspondence in the name of Hill.

Officer Gastaldo further testified that the man arrested said that his name was Miller, that he did not live in the apartment and that he had no knowledge of what was in the apartment. Another portion of Officer Gastaldo's testimony was: "First I questioned him as to his identity, so as to make sure he was not Mr. Hill; he told me his

name was Miller; that he didn't know where Archie Hill was; that Archie Hill did in fact own the apartment there, or lived in the apartment, and that he was just sitting around waiting for him; that to his knowledge there was no one else in the apartment but him." Miller did not say how he entered the apartment, but said that he just came in and was waiting for Hill. He produced some type of identification in the name of Miller. But, Officer Gastaldo testified, it did not "prove anything" to him. Approximately "a day and a half later" he ascertained the true identity of the arrested man.

The pages from the diary were found in a dresser drawer in the bedroom after the questioning of Miller and after the finding of the rent receipts in the name of Hill. The other objects were also found in the bedroom. Miller was not asked to give permission for the search. The officers were in the apartment "[p]robably a couple of hours."

The evidence sustained the conclusion that Officer Gastaldo believed that the man he placed under arrest was Hill. He subsequently found that he was mistaken. Assuming that the police had reasonable cause for the arrest of Miller and the search of his person,¹ the question presented for resolution is whether the ensuing plenary search of the apartment was lawful. In *Harris v. United States*, 331 U.S. 145, at page 151, 67 S.Ct. 1098, at page 1101, 91 L.Ed. 1399, the Supreme Court stated: "The opinions of this Court have clearly recognized that the search incident to arrest may, under appropriate circumstances, extend beyond the person of the one arrested to include the premises under his immediate control." (See *United States v. Rabinowitz*, 339 U.S. 56, 63, 70 S.Ct. 430, 94 L.Ed. 653.)

¹ In *People v. Yet Ning Yee*, 145 Cal App.2d 513, at pages 517-518, 302 P.2d 616, at page 619, the court stated: "In *People v. Kitchens*, supra, 46 Cal.2d 260, 263, 294 P.2d 17, there is an intimation that where an officer in good faith mistakes another person for one whom the officer has reasonable grounds to believe is guilty of a felony, and searches the other person, finding on him evidence of the commission of a felony, the search and the consequent arrest is legal." (See Collings, *Toward Workable Rules of Search and Seizure—An Amicus Curiae Brief* (1962) 50 Cal.L.Rev. 421, 442.)

The difficulty in the present case is that, aside from inferences arising from the mere presence of Miller in the apartment and based upon the officer's mistaken belief that he was Hill, the record does not show that the apartment was under the immediate control of Miller. The constitutionally protected privacy at stake was that of Hill who was absent from his place of residence. While the doctrine of probable cause assures a balance between the rights of the individual and those of the government with respect to the matter of arrest, the constitutional protection against unreasonable searches, particularly of a person's home, would be less than complete if a plenary search could be justified as incident to an arrest of a person mistakenly believed by an officer to be in immediate charge of the premises. Such a case is not one where the right of privacy must reasonably yield to the right of search. While it is true that in the present case it appears that the officers acted in good faith, the warning of *Beck v. State of Ohio*, 379 U.S. 89, at page 97, 85 S.Ct. 223, at page 229, 13 L.Ed.2d 142, should be heeded: "If subjective good faith alone were the test, the protections of the Fourth Amendment would evaporate, and the people would be 'secure in their persons, houses, papers, and effects,' only in the discretion of the police."

Without the illegally obtained pages of the defendant's diary and other objects noted hereinabove the evidence is insufficient to sustain the conviction. Therefore, the judgment cannot stand.

The judgment is reversed.

COBEY and MOSS, JJ., concur.

IN THE SUPREME COURT OF THE STATE OF
CALIFORNIA IN BANK

Crim. 12275

THE PEOPLE, PLAINTIFF AND RESPONDENT

v.

ARCHIE WILLIAM HILL, JR., DEFENDANT AND APPELLANT

OPINION—filed November 13, 1968

On October 20, 1966, after trial without a jury, defendant was convicted of the crimes of robbery (Pen. Code, § 211) and kidnapping for the purpose of robbery (Pen. Code, § 209). He has appealed from the resulting judgment.

Four men robbed a residence in Studio City on June 4, 1966. The following day, Alfred Baum and Richard Bader were arrested for possession of narcotics. At the time of their arrest, they were driving in defendant's car, which contained stolen property from the Studio City robbery. Both men made full statements admitting the commission of the robbery, and both implicated defendant.¹ Bader stated that he was sharing an apartment with defendant at 9311 Sepulveda Boulevard, and that the guns used and the property taken were there.

On June 6, Officer Gastaldo interviewed Baum and Bader, and they repeated their inculpations of Hill.² From

¹ Baum and Bader were properly warned of their *Dorado* rights, but they were not also informed that counsel would be appointed if they were indigent. Their confessions were therefore inadmissible as to their guilt. (*Miranda v. Arizona*, 384 U.S. 436; see C.T. 47-58.) Because the confessions did not violate defendant's rights, however, they were admissible on the issue of probable cause for his arrest. (*People v. Varnum*, 66 Cal.2d 808, 813.)

² Bader told Gastaldo that he could go to the apartment to search. Even if failure to properly advise Bader of his *Miranda* rights did not vitiate the consent (see *People v. Smith*, 63 Cal.2d 779, 798-799), the subsequent search could not be justified on the basis of the consent because the facts surrounding it—whether it was not a mere submission to authority, not bound up with unlawful conduct—were never developed (see *People v. Henry*, 65 Cal.2d 842, 846), and

records of the Los Angeles Police Department Gastaldo verified Hill's association with Bader, his age and physical description, his residence, and the make of his automobile. This information corresponded with and corroborated the descriptions provided by the robbery victims and data supplied by Baum and Bader. Gastaldo and three other officers proceeded to Hill's apartment, and after confirming the correctness of the address, knocked on the door. Gastaldo testified: "The door was opened and a person who fit the description exactly of Archie Hill, as I had received it from both the carl Wrds and from Baum and Bader, answered the door. . . . We placed him under arrest for robbery."

The arrested man said that his name was Miller, that he did not live in the apartment, and that he was just "sitting around" waiting for something, and that he had seen no guns, although they were in the apartment, and that he knew of any stolen property. He stated that he did not have identification, but Miller's credentials did not "prove anything" to Gastaldo. Miller was subsequently booked, held for a day and a half, and released.

The officers searched the released premises and found weapons, stolen property, and two pages of a diary in defendant's handwriting. The diary relates of a robbery of June 4. At trial, defendant told a damning story of the robbery, and two witnesses to the robbery were

Bader's consent does not preclude the evidence found in the apade a challenge to the admissibility of § 76, pp. 72-73). *rtment* (see Witkin, Cal. Evidence,

³ The diary narrated: "Fr Saturday night we went out today I went out with Gina. Then there it was closed, so we had, hold up a market, but when we got door, and when they answered to go to a house. We knocked on the the man on the head with my the door we ran in and I had to hit the floor fast enough. We only gun, because he didn't get down on from there and went to TJ & got about \$60 from them. We left back we pulled over at the ^{rand} scored seven keys. On the way trunk of the car. We got back bad block, but they only checked the went to bed. Then Dick and home about 6:00 in the morning. I with us left my apartment with one of the guys that made this run This turned out to be a mi Dick to go and get something to eat. possession of grass." stake, because they got busted for

unable to identify Hill. The only substantial evidence of his guilt consisted of materials found in the search. The question presented is whether the police obtained such evidence by means of an unreasonable search and seizure.

It is axiomatic that a search incident to a valid arrest may "extend beyond the person of the one arrested to include the premises under his immediate control." (*Harris v. United States*, 331 U.S. 145, 151; *People v. Cruz*, 61 Cal.2d 861, 865-866; *People v. Burke*, 61 Cal.2d 575, 579-580; 44 Cal.Jur.2d, Searches and Seizures, § 42, pp. 110-113.) The police did not have probable cause to arrest a man named Miller, and Miller was not in fact in immediate control of Hill's apartment. The arrest and search must be validated, if at all, on the theory that the mistaken beliefs of the police rendered their activity "reasonable" in a constitutional sense.

THE ARREST

The threshold question whether the police had probable cause to arrest *Hill* need not be labored; they clearly did. *Hill's* participation in the robbery was attested by his cohorts, and although they were not informants of proven reliability, their admissions were entitled to great weight and were corroborated in material particulars. (*People v. Sandoval*, 65 Cal.2d 303, 307-311; *People v. Ingle*, 53 Cal.2d 407, 412-413.) Furthermore, the evidence shows that Gastaldo honestly and reasonably believed that the man he placed under arrest *was* Hill. Authority is sparse, but it appears that the arrest of Miller, whom the police reasonably believed to be Hill, was valid.

Thus, in *People v. Campos*, 184 Cal.App.2d 489, the police were searching for a Willie Campos who resided on Paramount Boulevard and was sought on federal charges. They had a picture of defendant, a different Willie Campos, who also resided on Paramount Boulevard. When collared by the police, defendant consented to a search which disclosed narcotics. Both arrest and search were valid. Similarly, in *People v. Miller*, 193 Cal.App.2d 838, the police sought a Cecil Miller who was wanted on three traffic warrants. They found defendant, a different Cecil

Miller, and a search incident to his arrest disclosed narcotics. The arrest and search were lawful.

Miller was not prosecuted, but the lesser included principle is plain; When the police have probable cause to arrest one party, and when they reasonably mistake a second party for the first party, then the arrest of the second party is a valid arrest. (See *People v. Kitchens*, 46 Cal.2d 260, 263 (arrest was unlawful "unless the officers were justified in arresting Germane and reasonably mistook defendant for him."); *People v. Yet Ning Yee*, 145 Cal. App.2d 513, 517-518; cf. *People v. Villareal*, 262 A.C.A. 442, 448; *People v. Soto*, 144 Cal.App.2d 294, 300; 5 Cal. Jur.2d, *Arrest*, § 36, pp. 239-240).⁴

THE SEARCH

Unlike most mistaken arrest cases, however, this is not one in which the arrestee's own "papers, and effects" were at stake when the police initiated their search. There remains the question whether Hill's absence and Miller's lack of control of the premises combined to render a valid arrest insufficient warrant for the ensuing search; whether, in brief, the special concern for *privacy* implicit in the Fourth Amendment should override the ostensible reasonableness of the police action. In a chain of cases presenting analogous questions concerning vicarious waivers of constitutional rights, the answer has been no.

In *People v. Gorg*, 45 Cal.2d 776, 783, the defendant rented a room in a private residence. In defendant's absence, the homeowner allowed the police to search the room where they found narcotics. The court held that

⁴ The principle that mistaken identity does not vitiate an arrest may fairly be found in Penal Code section 836, subdivision 3, which also provides that mistake as to the commission of a felony does not vitiate an arrest. The statute allows an officer to arrest without a warrant whenever "he has reasonable cause to believe that the person to be arrested has committed a felony, whether or not a felony has in fact been committed."

A search incident to an arrest on mistaken identity is valid (*People v. Miller*, *supra*, 193 Cal.App.2d 838; *People v. Campos*, *supra*, 184 Cal.App.2d 489), as is a search incident to an arrest for a felony which has not in fact been committed (cf. *Witkin, Cal. Evidence* (2d ed. 1966) § 113, pp. 112-113).

where "officers have acted in good faith with the consent and at the request of a home owner in conducting a search, evidence so obtained cannot be excluded merely because the officers may have made a reasonable mistake as to the extent of the owner's authority." Although sometimes criticized,⁵ the rule that a search is not unreasonable if made with the consent of a third party whom the police reasonably and in good faith believe has authority to consent to their search has been regularly reaffirmed. (See, e.g., *People v. Smith*, *supra*, 63 Cal.2d 779, 799; *People v. Caritativo*, 46 Cal.2d 68, 72-73; *People v. Corrao*, 201 Cal.App.2d 848, 852; *People v. Yancy*, 196 Cal.App.2d 665, 667; *People v. Williams*, 189 Cal.App.2d 29, 38; *People v. Ransome*, 180 Cal.App.2d 140, 145-146; Witkin, *Cal. Evidence* (2d ed. 1966) §§ 82-88, pp. 78-82.)

These cases contain the two unusual elements found here: An absent defendant and license to search provided

⁵ See, e.g., Note (1966) 33 U.Chi.L.Rev. 797, 801-804; Note (1965) 12 U.C.L.A.L.Rev. 614.

The critics rely on *Stoner v. California*, 376 U.S. 483, 488, where the court said: "Nor is there any substance to the claim that the search was reasonable because the police, relying upon the night clerk's expressions of consent, had a reasonable basis for the belief that the clerk had authority to consent to the search [of defendant's hotel room]. Our decisions make clear that the rights protected by the Fourth Amendment are not to be eroded by strained applications of the law of agency or by unrealistic doctrines of 'apparent authority.'" (See *Chapman v. United States*, 365 U.S. 610 (landlord).) California cases are to the same effect. (See *People v. Roberts*, 47 Cal.2d 374, 377 (apartment manager); *People v. Burke*, 208 Cal.App.2d 149, 160 (hotel manager).)

And it is often ignored that the court also said: "[T]here is nothing in the record to indicate that the police had any basis whatsoever to believe that the night clerk had been authorized by the petitioner to permit the police to search the petitioner's room." (376 U.S. at p. 489.) The *sine qua non* of the operation of the rule of *Gorg* is an honest belief based on reasonable grounds.

Neither is *Beck v. Ohio*, 379 U.S. 89, 97, germane. The court remarked there that "If subjective good faith alone were the test, the protections of the Fourth Amendment would evaporate, and the people would be 'secure in their persons, houses, papers, and effects,' only in the discretion of the police." In *Beck*, the police acted without probable cause and only debateably in good faith in arresting and searching the petitioner. No one disputes that good faith is not a substitute for probable cause.

by a person without actual authority to do so. They recognize that any search or arrest constitutes a substantial invasion of privacy. They conclude that such invasions are not more obnoxious when predicated upon a mistake. It therefore appears that neither Hill's absence nor Miller's lack of control vitiated the search where the police validly arrested Miller in the reasonable and good faith belief that he was Hill and that he controlled the premises.

In summary, we hold that the reasonable but mistaken beliefs of the police did not render their conduct unreasonable in a constitutional sense. Mistake of identity does not negate probable cause to arrest, and a search based on a valid but mistaken arrest is not unreasonable as an unwarranted invasion of either the arrestee's or the defendant's privacy. The evidence of Archie Hill's participation in the Studio City robbery which was the fruit of the search of his apartment was properly admitted. The judgment of conviction is affirmed.

PETERS, J.

WE CONCUR:

TRAYNOR, C.J.
McCOMB, J.
TOBRINER, J.
MOSK, J.
BURKE, J.
SULLIVAN, J.

ORDER DENYING REHEARING

December 13, 1968
ORDER DUE

Crim. No. 12275

Received Mar. 7, 1969, Office of the Clerk, Supreme Court,
U.S.

IN THE SUPREME COURT OF THE STATE OF
CALIFORNIA, IN BANK

PEOPLE

v.

HILL

Filed Dec. 11, 1968, William L. Sullivan, Clerk
By /s/ J. L. Rogers, S. F. Deputy.

Appellant's petition for rehearing DENIED.

/s/ Traynor
Chief Justice

SUPREME COURT OF THE UNITED STATES

No., October Term, 1968

ARCHIE WILLIAM HILL, JR., PETITIONER

vs.

CALIFORNIA

ORDER EXTENDING TIME TO FILE PETITION FOR
WRIT OF CERTIORARI—February 13, 1969

UPON CONSIDERATION of the application of counsel for petitioner(s),

IT IS ORDERED that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including March 13, 1969.

/s/ Wm. O. Douglas
*Associate Justice of the Supreme
Court of the United States*

Dated this 13th day of February, 1969.

SUPREME COURT OF THE UNITED STATES
No. 69 Misc., October Term, 1969

ARCHIE WILLIAM HILL, JR., PETITIONER

v.

CALIFORNIA

On petition for writ of Certiorari to the Supreme Court of the State of California.

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND GRANTING PETITION FOR WRIT OF CERTIORARI—October 13, 1969

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 730 and placed on the summary calendar.